

KY
65
.L3rr
No. 198
1983
c. 1

PROGRAM EVALUATION

LEGISLATIVE RESEARCH COMMISSION
LIBRARY

SMALL OPERATORS TECHNICAL ASSISTANCE PROGRAM (SOTAP)

Research Report No. 198
Legislative Research Commission

Frankfort, Kentucky

Program Review & Investigations Committee

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

SENATOR JOE PRATHER
President Pro Tem

REPRESENTATIVE BOBBY H. RICHARDSON
Speaker

Chairmen

Senate Members

DELBERT MURPHY
Assistant President Pro Tem

JOE WRIGHT
Majority Floor Leader

JAMES P. BUNNING
Minority Floor Leader

DAVID K. KAREM
Majority Caucus Chairman

GENE HUFF
Minority Caucus Chairman

HELEN GARRETT
Majority Whip

DOUG MOSELEY
Minority Whip

House Members

DONALD J. BLANDFORD
Speaker Pro Tem

JIM LEMASTER
Majority Floor Leader

ARTHUR L. SCHMIDT
Minority Floor Leader

WILLIAM (BILL) DONNERMEYER
Majority Caucus Chairman

RICHARD TURNER
Minority Caucus Chairman

JIM DUNN
Majority Whip

WOODY ALLEN
Minority Whip

VIC HELLARD, JR., Director

* * * * *

The Kentucky Legislative Research Commission is a sixteen-member committee, comprised of the majority and minority leadership of the Kentucky Senate and House of Representatives. Under Chapter 7 of the Kentucky Revised Statutes, the Commission constitutes the administrative office for the Kentucky General Assembly. Its director serves as chief administrative officer of the legislature when it is not in session.

The Commission and its staff, by law and by practice, perform numerous fact-finding and service functions for members of the General Assembly. The Commission provides professional, clerical and other employees required by legislators when the General Assembly is in session and during the interim period between sessions. These employees, in turn, assist committees and individual members in preparing legislation. Other services include conducting studies and investigations, organizing and staffing committee meetings and public hearings, maintaining official legislative records and other reference materials, furnishing information about the legislature to the public, compiling and publishing administrative regulations, administering a legislative intern program, conducting a pre-session orientation conference for legislators, and publishing a daily index of legislative activity during sessions of the General Assembly.

The Commission also is responsible for statute revision, publication and distribution of the **Acts and Journals** following sessions of the General Assembly and for maintaining furnishings, equipment and supplies for the legislature.

The Commission functions as Kentucky's Commission on Interstate Cooperation in carrying out the program of the Council of State Governments as it relates to Kentucky.

82
65

SMALL OPERATORS TECHNICAL ASSISTANCE PROGRAM (SOTAP)

Prepared by:
Jeff Kell, Project Manager
Sheila Mason
John Downard

Research Report No. 198

*Legislative Research Commission
Frankfort, Kentucky
August, 1983*

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY
AUGUST 1983

This report was prepared by the Legislative Research Commission and paid for from state funds.

FOREWORD

The coal mining industry is of central importance to the economy of the Commonwealth. The majority of coal mine operators mine less than 200,000 tons per year. It is these operators who are being severely impacted by the federal Surface Mining Control and Reclamation Act of 1977, and consequently, are being assisted by the state funded Small Operators Technical Assistance Program (SOTAP). This report recommends continuance of this program along with some modifications in the way it has been funded and operated over the past few years.

This study was conducted by Program Review and Investigations Committee staff, Jeff Kell, Project Manager; Sheila Mason and John Downard. Special appreciation is extended to Esther Robison and Jeanie Sutherland for their efforts in preparing this manuscript.

Vic Hellard, Jr.
Director

The Capitol
Frankfort, Kentucky
August, 1983

TABLE OF CONTENTS

FOREWORD	i
TABLE OF CONTENTS	iii
LIST OF TABLES	iv
LIST OF FIGURES	iv
SUMMARY	v
CHAPTER I. INTRODUCTION	1
CHAPTER II. BACKGROUND AND PROGRAM DESCRIPTION	3
Small Coal Mine Operators	3
Federal Strip Mine Law	7
Permitting Requirements and Costs	9
Kentucky Small Operators Technical Assistance Project, Inc.	11
Existing Energy Program	14
Kentucky Energy Cabinet Evaluation	21
Conclusions	22
CHAPTER III. OTHER PROGRAMS	23
Federal SOAP	23
Abandoned Mine Lands Program	25
Kentucky Natural Resources Information System	28
Natural Resources and Environmental Protection Cabinet Permits ..	28
Department of Mines and Minerals	30
U. S. Soil Conservation Service	31
Kentucky Geological Survey	32
Tennessee Valley Authority	33
UK—IMMR	35
College Programs	36
Pikeville College—CITAC	36
Kentucky Export Resources Authority, Inc.	37
CHAPTER IV. SURVEY OF SMALL MINE OPERATORS	39
Survey Methodology	39
Survey Results	41
Conclusions	49
CHAPTER V. CONCLUSIONS AND RECOMMENDATIONS	51
APPENDICES:	
A. Definitions	59
B. Energy Cabinet Telephone Survey	61
C. Small Coal Operator Mail Survey Questionnaire	62
D. Executive Order 80-473	66
E. Committee Action Transmittal Memo to Co-chairmen of Energy, Agriculture, and Appropriations and Revenue Committees, May 9, 1983	70

LIST OF TABLES

1. Cost of Permitting a Typical 25-Acre Coal Mine in Eastern Kentucky Under Kentucky Permanent Regulations	11
2. Type of Assistance Needed	43
3. Respondents Receiving Assistance from Agencies	46
4. Type of Assistance Received	48
5. Reasons for Not Mining Coal in the Future	49
6. Who Can Best Provide Assistance	50

LIST OF FIGURES

1. Kentucky Coal Production	5
2. Kentucky Coal Severance Tax Revenues	6
3. DNREP Permitting Process	10
4. SOTAP Organizational Chart	18
5. Kentucky Coal Producing Counties and SOTAP Service Areas	20
6. Type of Miner	42
7. Counties Operated in by Respondents	42
8. Who Can Best Provide Assistance to Small Mine Operators	45
9. Percentage Distribution of Respondents by Region	47

SUMMARY

The Small Operators Technical Assistance Program (SOTAP) was created by the General Assembly in the 1979 Special Session in response to fears that Kentucky's small coal mine operators would not be able to cope with the effects of the federal Surface Mining Control and Reclamation Act of 1977 (PL 95-87). The SOTAP program was placed in the Natural Resources and Environmental Protection Cabinet in accordance with HB 38, presently codified as KRS 350.450(4), and, as directed by the legislation, it consisted of two major parts: (1) a special internal administrative program to review and give priority to permit applications from small operators; and (2) a technical assistance program to aid small operators in dealing with permitting and environmental protection performance standards.

In the 1980 General Assembly, the executive budget bill, HB 931, appropriated funds budgeted for SOTAP to the Energy Cabinet. This effectively transferred the program, in its entirety, from the Natural Resources and Environmental Protection Cabinet to the Energy Cabinet. However, on June 17, 1980, Governor Brown modified this action through Executive Order 80-473, which transferred back to the Natural Resources and Environmental Protection Cabinet about one-third of the funds for SOTAP. The SOTAP program has remained split between the two Cabinets ever since.

The 1982 General Assembly, in budget bill HB 295, directed the Program Review and Investigations Committee to study the operation of the permitting technical assistance aspect of SOTAP, to evaluate its worth for continuance, and to submit its findings and recommendations to the 1984 General Assembly. In accordance with this directive, the Program Review and Investigations Committee, at its first meeting of the interim on July 6, 1982, approved a work plan to review this aspect of the program.

After reviewing existing documentation, conducting numerous interviews with persons involved with the SOTAP program at one time or another, and analyzing the results of a survey of small operators, the committee adopted several conclusions and recommendations.

Small operators are important to the coal industry and to the overall state economy because they comprise approximately seventy percent of all coal mine operators in Kentucky and account for about a quarter of all the tonnage produced annually. Coal production by small operators generated \$56.8 million in state severance tax revenues in 1981. Moreover, small operators maintain competition within the coal industry, supply coal for small contracts and provide between 25,000 and 35,000 jobs, which generate between \$15.3 million and \$20.4 million in primary wages.

Obtaining a permit to mine coal under PL 95-87 can require at least \$20,000 of up-front capital for a typical 25-acre site. Worse yet, it can take a year or longer. These factors have an adverse impact on the small operator, who traditionally sells his coal on the spot market and needs to react quickly to market fluctuations.

The small operator helps maintain competition within the coal industry by taking a lower price for his coal on the spot market than utilities pay through long-term contracts. Also, the small operator often supplies coal to contractors whose business is too small to interest the larger coal producers. Without suppliers, small contractors would look for alternate sources of energy. In addition, small operators are able to mine small seams of coal that larger operators regard as uneconomical. So, in many ways the small operator is an essential part of the coal business and not likely to be replaced by big operators.

Recommendation

1. A state-funded assistance program for Kentucky small coal mine operators should be continued in accordance with KRS 350.450(4).

In order to meet the twofold mandate of HB 38, the Natural Resources and Environmental Protection Cabinet established a special internal administrative program to review small operator permits, and a permitting technical assistance program operated by the Kentucky Small Operators Technical Assistance Project, Inc. (KSOTAP, Inc.), an independent and autonomous agency funded through the Natural Resources and Environmental Protection Cabinet. These two programs worked hand in hand to reduce the time required for small operators to obtain a permit to mine coal.

When the responsibility for SOTAP, Inc. was transferred to the Energy Cabinet, it was no longer funded as an autonomous agency. Instead it was made a part of the Division of Coal Development, and the focus of the program changed from permitting related technical assistance to a broader type of assistance dealing with problems of production, marketing, finance, leasing and regulations.

The enabling legislation for the Kentucky Small Operators Technical Assistance Program—KRS 350.450(4)—mandates a program of permitting technical assistance. Although a portion of the money appropriated for implementation of the program had been transferred to the Energy Cabinet, the statutory responsibility for implementation of the entire program by the Natural Resources and Environmental Protection Cabinet was never changed by the General Assembly.

Small operators are still in need of assistance with the permitting process. The Natural Resources and Environmental Protection Cabinet not only has the statutory responsibility to provide such assistance, but also possesses pertinent information and technical expertise useful in providing permitting technical assistance. This is a function that Energy Cabinet officials say they are not well equipped to perform. Therefore, instead of suggesting changing the law to conform to the program as presently operated, the following recommendation is made.

Recommendation

2. State funds appropriated to the Energy Cabinet to support the

Small Mine Operators Technical Assistance Program (SOTAP) in accordance with KRS 350.450(5), now subsection (4) in the KRS 1983 replacement, should in the future be budgeted to the Natural Resources and Environmental Protection Cabinet. Personnel, equipment, materials and any funds should also be transferred at the appropriate time.

Various state and federal agencies have resources or assistance programs that are designed to assist coal operators, but small operators are often not aware of them. Kentucky's small operators might be better served if one organization were made responsible for coordinating and improving working relationships with the different programs and service agencies. The Small Coal Operators Advisory Council, established under KRS 152A.127, could function in this capacity and also could be broadened in scope to function as an advocate of small coal mine operators and to communicate their needs.

Recommendation

3. The Small Coal Operators Advisory Council, as established in KRS 152A.127, should be made to report directly to the Secretary of the Governor's Executive Cabinet. Ten of its fourteen members should be appointed by the Governor. Seven members of the Council should be full-time coal operators whose mines produce 200,000 tons of coal or less per year. Three at-large members should have backgrounds in one or more of the following areas: transportation, marketing, mining education, and mining engineering. The Secretaries of the Natural Resources and Environmental Protection, Energy, and Commerce Cabinets and the Commissioner of the Department of Mines and Minerals should serve ex-officio as the four remaining members. The mission of the Council should be broadened to include oversight of state-funded or administered programs serving or assisting small coal mine operators. The Council should be attached to the Natural Resources and Environmental Protection Cabinet for administrative purposes.

Budgetary constraints and the lack of funding sources have reduced the availability of training and education classes for small mine operators. However, despite state and federal budget reductions in this area, there is some federal interest in funding these kinds of programs.

Recommendation

4. The Natural Resources and Environmental Protection Cabinet, being the agency designated to have primary responsibility at the state level for administering PL 95-87, should immediately take the in-

initiative in developing a proposal, in close cooperation with OSM, aimed at determining the framework for a training, education and assistance program under Section 705 or such other part of PL 95-87 as is appropriate. Cooperation and assistance should also be sought from all interested private and public agencies, especially Kentucky's universities and colleges.

The Natural Resources and Environmental Protection Cabinet estimates that there are approximately 1,000 small coal mine operators who produce 100,000 tons or less per year. Given present funding limitations, it is difficult to see how most potential clients under the 100,000 ton limitation can be served, let alone all those who mine less than 200,000 tons of coal a year that are eligible for the program. The assistance program can reach more of the most needy clients if it concentrates on serving those with the smaller operations.

Recommendation

5. The definition of a small coal mine operator in KRS 350.450(4) should remain the same; however, first priority for assistance under SOTAP should go to operators mining 100,000 tons or less per year.

Small operators are very much in need of marketing assistance. Responsibility for promoting the market for coal produced in the state has been delegated under KRS Chapter 152A to the Division of Coal Development within the Energy Cabinet.

Recommendation

6. The Kentucky Energy Cabinet is urged to continue its marketing assistance role under 152A.125(1).

CHAPTER I

INTRODUCTION

Small coal mine operators are defined in KRS Chapter 350 as those mining less than 200,000 tons a year. They make up perhaps seventy percent of all coal operators in Kentucky, according to Natural Resources and Environmental Protection Cabinet estimates. The small operator presents the largest problem to Natural Resources and Environmental Protection Cabinet regulatory programs because he is least able to cope with reclamation and permitting requirements.

When Congress passed the Surface Mining Control and Reclamation Act of 1977 (PL 95-87), it included a Small Operators Assistance Program (SOAP) that was intended to lend financial assistance to small operators in gathering technical information required to obtain permits to mine coal under the new law. Kentucky executive branch officials and the General Assembly felt the federal program was too narrow in scope and would not provide immediate help to most small mine operators. Therefore, during the 1979 extraordinary session, the General Assembly passed HB 39, KRS 350.450(4), which called for the Natural Resources and Environmental Protection Cabinet to:

adopt programs, regulations, and procedures designed to assist the small coal operator with permitting and environmental protection performance standards for strip and underground coal mining operations.

This program, called the Small Operators Technical Assistance Program (SOTAP), is presently operated by the Energy Cabinet and has undergone numerous changes since its inception. In the 1982 General Assembly, legislators raised several questions about the usefulness of the program but decided to continue funding it. However, in the budget bill, HB 295, the General Assembly directed the Program Review and Investigations Committee to study the operation of the assistance program initiated under KRS 350.450(5), now subsection (4), "to evaluate its worth for continuance, and to submit its findings and recommendations to the 1984 General Assembly."

In accordance with this directive, the Program Review and Investigations Committee, at its first meeting of the interim, on July 6, 1982, approved a work plan to study the program. The major elements of the work plan included:

- outlining the evolution of the Kentucky Small Operators Technical Assistance Program (SOTAP) from outset to present;
- determining if program target clients are being well served, especially relative to their needs as they see them; and
- determining the effect of program discontinuance on Kentucky's small coal mine operators.

Gathering information about the formation of the program was made easier by the collection of memos, papers and a chronology of events that was compiled and submitted by the Natural Resources and Environmental Protection Cabinet's Department of Surface Mining Reclamation and Enforcement. Additional background information was gained from numerous interviews with persons involved in the creation and operation of the program. The Energy Cabinet's Coal Development Division also provided files of documentation and field reports. During the course of the review, the Energy Cabinet's Office of Administration conducted an internal evaluation of the program, a copy of which was furnished to Program Review staff.

A mail survey was made of coal operators who had mined less than 200,000 tons in one or more of the past few years and had applied for assistance under the Small Operators Assistance Program (SOAP), and who had applied for a transition permit to mine coal under the permanent program. A questionnaire was mailed to 704 individuals and companies who met these conditions. A random sample was not contemplated since a very poor response rate was anticipated. The purpose of the survey was to gain insight into the perceptions, preferences and beliefs of Kentucky's small coal mine operators on the subject of providing them technical assistance.

This report is organized into five chapters. The second and third are mostly background and program descriptions, both of the program being evaluated and other programs designed to aid small coal operators. The fourth chapter describes the survey methodology and results. The fifth chapter states the main conclusions of the review and includes some recommendations for committee consideration.

Appendix A is a list of definitions of terms used in the text. Other parts of the Appendix include reference papers mentioned in the text.

CHAPTER II

BACKGROUND AND PROGRAM DESCRIPTION

Kentucky's coal industry represents one of the most important sectors of the state's economy. The Kentucky Small Operators Technical Assistance Program (SOTAP) was created out of concern for the economic well-being of the Commonwealth's coal industry after passage of stringent federal legislation in 1977 aimed at controlling environmental degradation caused by mining. Since the number of small mine operators is probably higher in Kentucky than in any other state, the Kentucky General Assembly, in extraordinary session, moved quickly in 1979 to set in place legislation enabling the creation of an assistance program for small operators. The program was initially established in a public, not-for-profit corporation through a grant from the Natural Resources and Environmental Protection Cabinet. Soon after the change in administrations in 1979, the responsibility for the program was shifted to the Kentucky Energy Cabinet, where it is presently attached to the Division of Coal Development.

This chapter details some the background reasons and events leading to the creation of SOTAP. It begins with a section describing small operators in terms of their importance from a coal production and tax revenue perspective and in terms of their numbers and needs. There is a summary of the 1977 federal strip mine act and a description of the initial program. Also included is a review of the existing SOTAP program and a brief description of an internal evaluation of the program conducted by the Energy Cabinet's Office of Administration. Finally, there is a section that addresses the changing needs of Kentucky's small operators.

Small Coal Mine Operators

Describing a typical Kentucky small mine operator is difficult because their numbers and characteristics vary dramatically, depending upon market and regulatory conditions. Even though many agencies and organizations serve or regulate small operators, there is no common definition of what one is.

There are presently two major definitions used to identify a small coal mine operator. The federal Surface Mining Control and Reclamation Act, PL 95-87, defines a small operator as one who mines less than 100,000 tons of coal in a given year. KRS Chapter 350, however, defines a small operator as one who mines less than 200,000 tons a year. This more liberal limit, established by the General Assembly in 1979, was an outgrowth of Kentucky's concern for its coal industry and its large proportion of "small" operators following passage of PL 95-87.

It is now more difficult than ever to characterize a small operator. The recent

slump in the coal market has caused a great many small operators to cease operations. Also, the increased costs and time delays associated with obtaining permits have raised doubts, both within and outside the industry, as to how many small operators will survive.

Mr. James R. Harris, Director of the Department of Interior's Office of Surface Mining, in expressing his personal support for small mine operators, cited the following reasons for the importance of the small mine operator to the coal industry. Small operators:

- keep the large operators "honest," by providing the potential to sell coal to utilities at lower prices on the spot market;
- fulfill many small coal contracts that large operators are not interested in, thereby reducing the incentive for small contractors to seek alternate fuel sources; and
- provide many jobs, both directly and indirectly, in geographical areas that typically have a dire need for them.

The economic impact of small mines is particularly beneficial to the area immediately surrounding the mining operation. This is because the small operator and his employees are usually tied more closely to the local economy than are large operators. They live in the area where they mine; thus a greater percentage of the income and profits they generate is spent and invested locally than is the case with larger operations, which tend to export a certain amount of business and capital out of the region in which they operate.

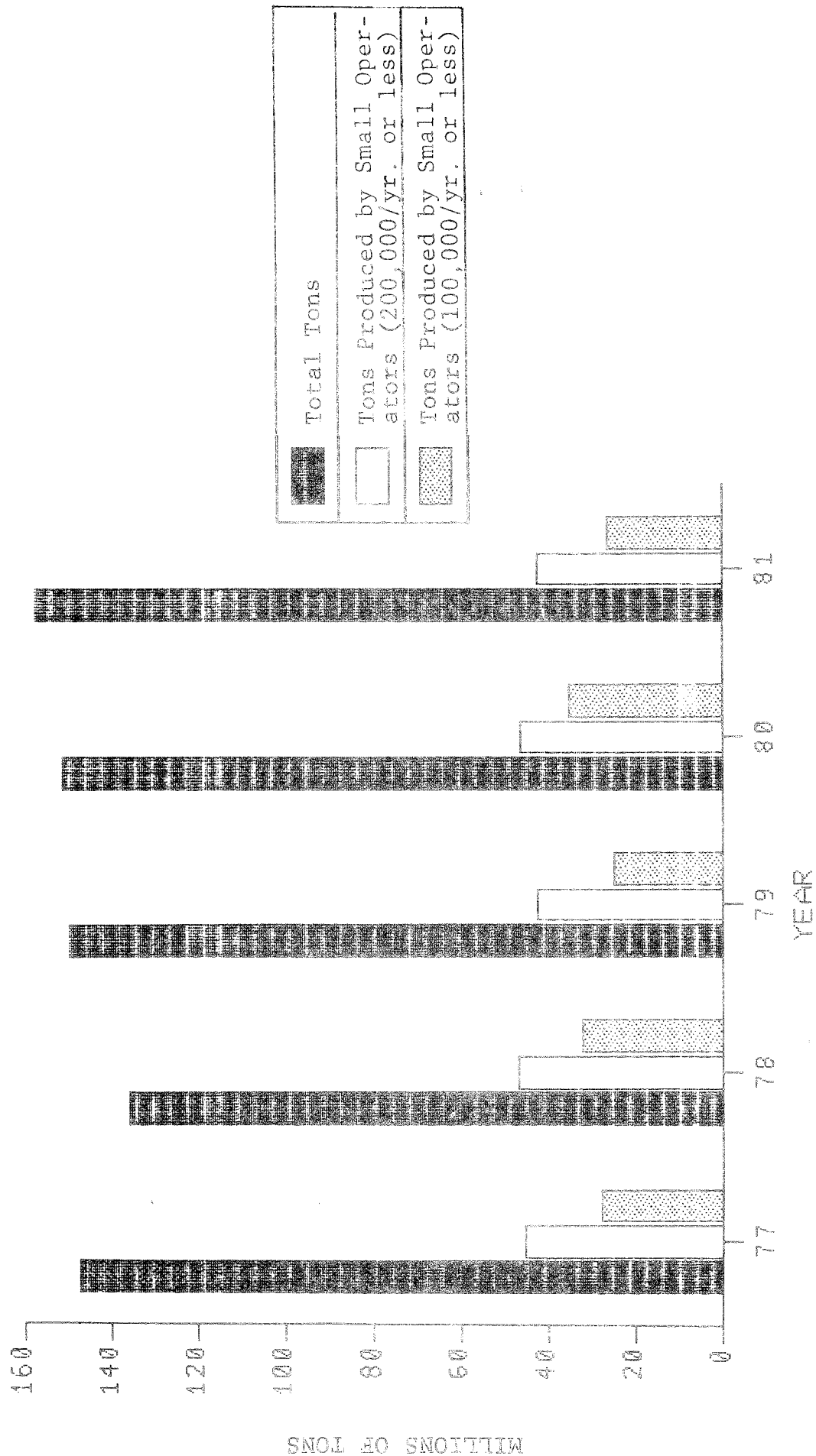
According to Department for Mines and Minerals records, during 1981 small operators (200,000 tons or less) were responsible for 27 percent (or 42,539,193 tons) of the coal mined in Kentucky, which resulted in severance taxes totaling \$56,581,696. Figures 1 and 2 display Kentucky Coal Production and Kentucky Coal Severance Tax Revenues respectively for calendar years 1977 through 1981.

Coal production over this period has remained relatively constant, both in total production and in tons produced by small operators, whether they produce 200,000 tons or less per year, or 100,000 tons or less per year. The small operator share of production may change in the next few years as the full impact of the 1977 federal strip mine act takes effect, but as yet it is hard to detect.

Coal severance tax revenues, on the other hand, have risen steadily over the period 1977 through 1981. This holds true for total revenues and revenues from small operators. Severance tax revenues are naturally dependent upon the amount of coal produced, but are also tied to selling price, which has risen from less than \$20/ton for contract coal in 1977 to around \$33/ton in 1981.

FIGURE 1

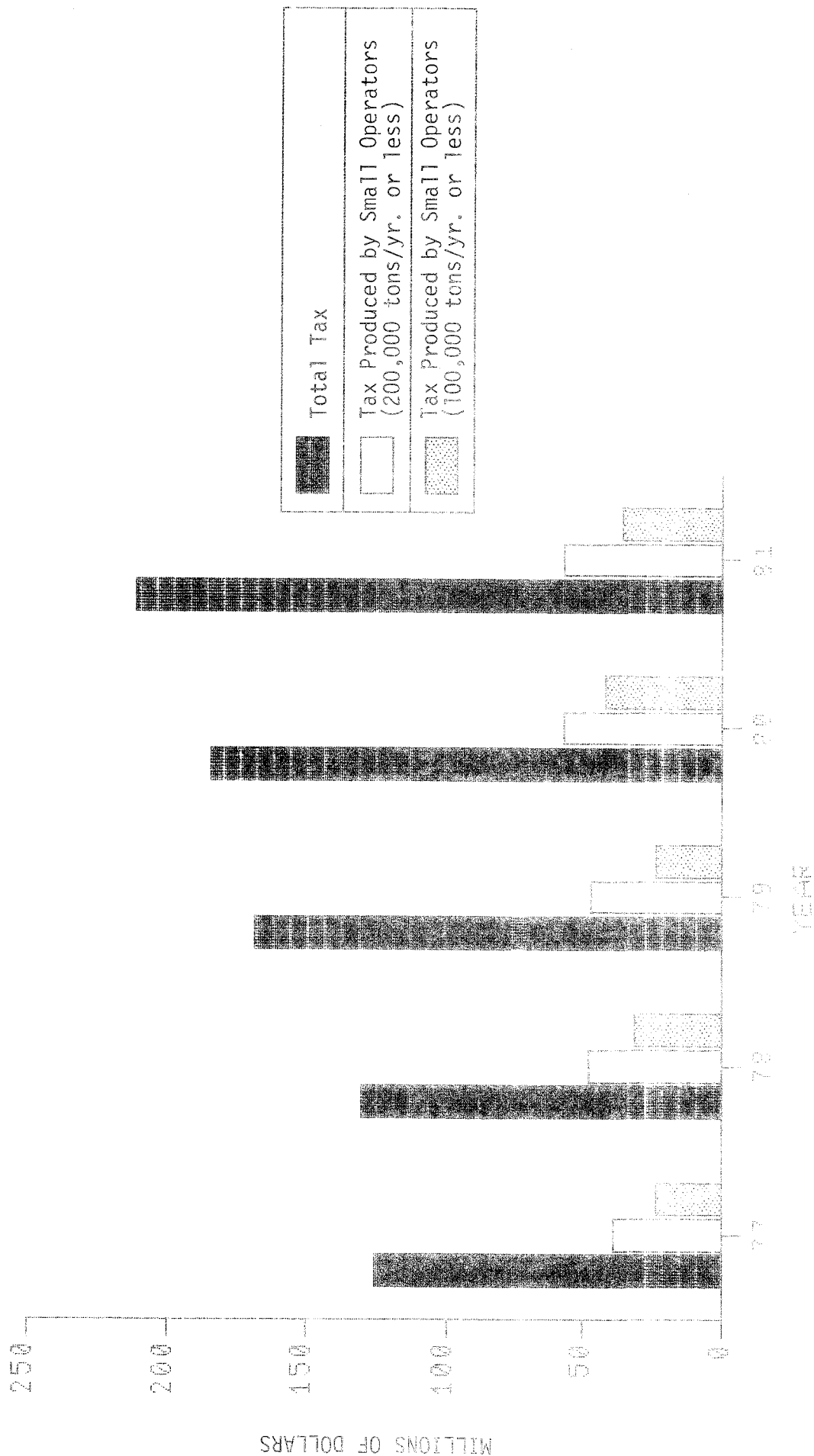
KENTUCKY COAL PRODUCTION



SOURCE: Department for Mines and Minerals.

FIGURE 2

KENTUCKY COAL SEVERANCE TAX REVENUES



SOURCE: Department for Mines and Minerals.

Utilities prefer to have enough small mines operating to maintain some competition within the industry, thereby keeping the price of coal lower than it might be otherwise. A study by Dr. Bernard Davis, *The Impact of Federal Regulations on the Small Coal Mine in Appalachia*, indicates that small operators (less than 100,000 tons per year) costs were \$21.63 per ton per year. Medium-sized mines (100,000-299,000) costs were \$23.47 per ton, whereas large operators (over 300,000) had costs of \$28.50 per ton. Lower labor and equipment costs, plus more flexibility, allow small operators to be more competitive, at least as far as selling price is concerned.

The economic importance of small operators is significant. Traditionally, during times of peak demand, the numbers of small operators tend to multiply quickly to fulfill production needs. Conversely, when the coal market contracts, the small operators are the first to shut down their operations. Consequently, under differing economic conditions the number of small operators actually mining can vary dramatically.

Small mine operators usually do not have adequate coal reserves to enter into long-term contracts with a utility. Utility contracts tend to run for ten to twelve years and are geared to a steady supply of coal. This requires a supplier to have guaranteed reserves, purchased in advance, to assure a stable price. This is difficult for most small miners, since they do not have the capital to lease large tracts of land. Moreover, utilities usually prefer not to enter into a large number of contracts with small operators for paperwork and management reasons. Peabody Coal Company, which produced over thirteen million tons of coal in 1981, sold almost all its coal to the Tennessee Valley Authority.

The November 1982 *Kentucky Coal Journal* reported that 1,100 companies paid severance tax at one time or another during 1981. However, the majority of money came from less than 800 mining companies. Of these companies, 147 mined over 200,000 tons of coal. This means about 950 small operators paid some coal severance tax during 1981.

According to the Kentucky Department of Manpower Services there were approximately 45,000 coal miners in Kentucky at the end of 1982. This is up from around 23,000 in 1970. The average hourly wage for these miners was \$15.30/hour for 1982. Fewer than 10,000 of Kentucky's miners belong to labor unions. Many of these no doubt work for small mine operators. A typical mine that produces 100,000 tons or less per year employs about ten individuals.

Federal Strip Mine Law

The federal Surface Mining Control and Reclamation Act of 1977 (PL 95-87) was enacted to provide uniform surface mining and reclamation standards for all states, and in so doing, it drastically altered the regulatory climate under which Kentucky miners were accustomed to operating. The law itself is very complex and the regulations that accompany it

are complicated and lengthy. Many people hold the opinion that the impact on small mine operators will be more severe than on large operators because of economies of scale that favor operators permitting larger acreages. Primacy was achieved in May, 1982, when the Kentucky Natural Resources and Environmental Protection Cabinet was delegated full responsibility by the federal Office of Surface Mining for implementing PL 95-87.

For the purposes of background and orientation, and to compare the regulatory climate before and after PL 95-87, selected sections of the act are described and contrasted with previously existing Kentucky statutes.

- PL 95-87 prohibits placement of spoil (mining waste) over the outslope on slopes greater than twenty degrees. Prior to this requirement, Kentucky statute did not specifically prohibit this practice and in some instances allowed it.
- Segregation of topsoil is now required. This requires the surface miner to haul topsoil to areas where it will not cause stream degradation through erosion and so it can be used later to recover and reclaim the mined area. This requirement means higher equipment and transportation costs.
- PL 95-87 specifically prohibits highwalls; it was previously required that all highwalls be reclaimed or backfilled, but the Kentucky Natural Resources and Environmental Protection Cabinet was allowed to make exceptions.
- The cost of reclamation bonds has escalated from a previous minimum of \$5,000 to a new minimum of \$10,000. Also, regulations regarding bond release are more stringent and now require public notice and provisions for public hearings, if requested.

The following subjects were not specifically addressed by the previously existing state law; however, PL 95-87 requires that:

- mined land be restored to equal or better use;
- mined land be restored to its approximate original contour, with the exception of the mountaintop removal method of mining;
- mining on prime farm land is allowed only under numerous restrictions;
- a planning process exist that designates land areas unsuitable for surface mining;
- controls on waste piles be in accordance with U. S. Army Corps of Engineers standards;
- insurance be possessed by mine operators to provide personal injury and property damage protection; and

- the existing hydrologic balance at the mine site and associated off-site areas be protected and preserved.

In summary, implementation of PL 95-87 requires a completely new and different orientation, especially for small mine operators. Much more information is now required before a permit can be granted to open a new mine site. And, all existing sites have to be re-permitted and mined under regulations established by PL 95-87. Much of the required information is technical, which means that consulting engineers and other experts have to be paid to develop it. Thus, obtaining a permit will require more time and money than in the past. The extra time it takes before a reclamation bond can be released will place a greater hardship on a small mine operator than it will on large operations which are typically better capitalized.

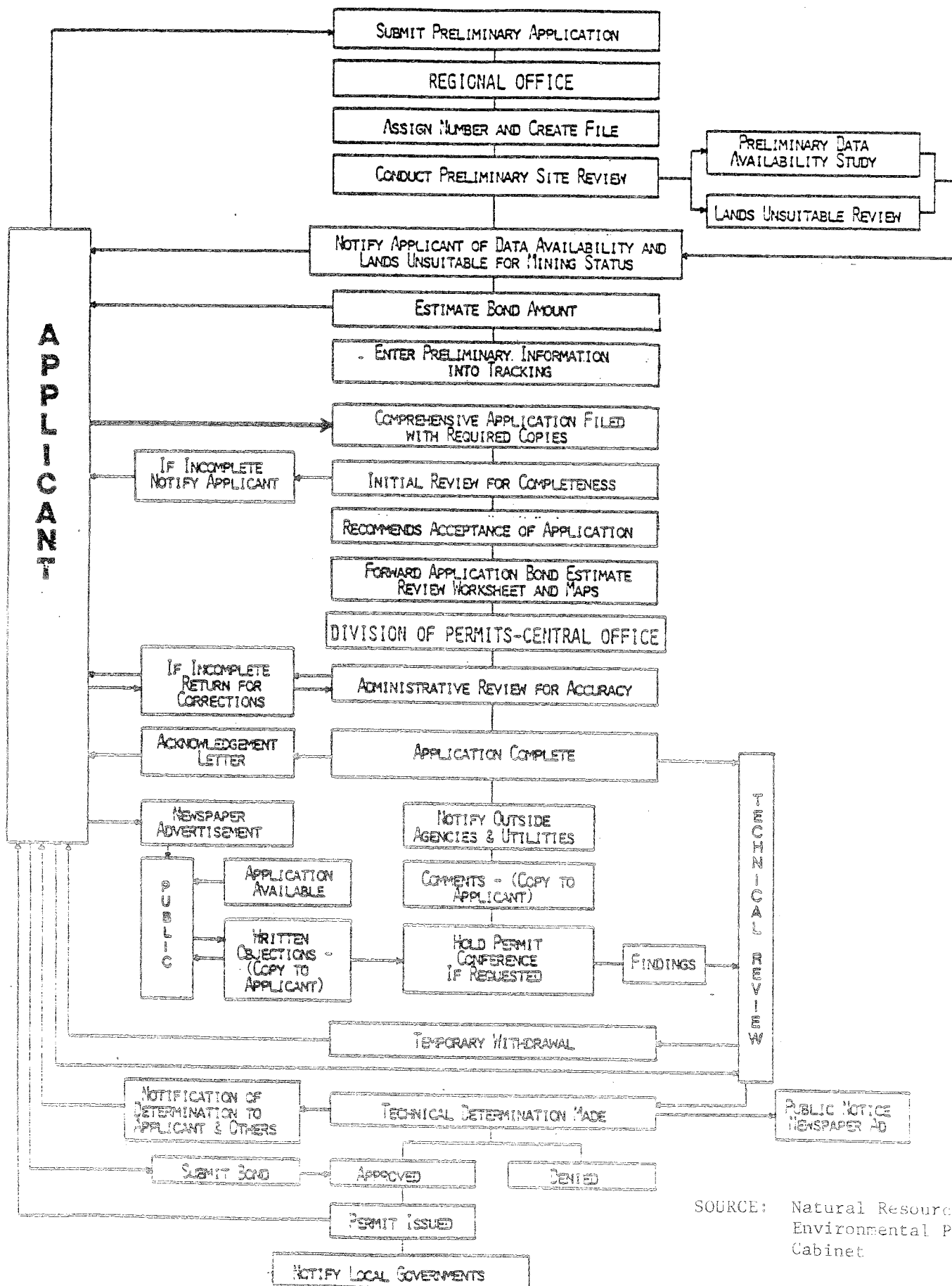
Permitting Requirements and Costs

The process of obtaining a permit to mine coal is not only time-consuming, but is expensive and complicated. In addition to a permit from Natural Resources, miners must also obtain a National Pollution Discharge Elimination System (NPDES) permit from the federal Environmental Protection Agency in Atlanta. Various other state, local business, and tax permits also must be obtained. The most complicated and lengthy permit application process is that required by the Natural Resources and Environmental Protection Cabinet. The flow chart in Figure 3 displays the major procedures required by the Cabinet's Application for a Surface Coal Mining and Reclamation Operator's Permit. Completing this process can take as long as a year and require thousands of dollars. Prior to the enactment of the federal surface mining act of 1977 the process was far less costly and time consuming.

An example of cost comparisons is contained in Table 1. Here, costs for basic permitting requirements are shown for a typical 25-acre coal site in eastern Kentucky. Prior to the 1977 federal law the cost approximated \$2,400. During the interim period following passage of the law, but prior to the final regulations of the permanent program taking effect, the costs were almost double, at \$4,000. However, under the permanent program, the actual costs are approximately \$18,000, over seven times greater than those incurred prior to 1977. This is not to say that the costs are now out of proportion to the potential profit of a 25-acre site. Some small operators will not be able to raise this much up front capital.

FIGURE 3

DNREP PERMITTING PROCESS



SOURCE: Natural Resources and Environmental Protection Cabinet

TABLE 1

**COST OF PERMITTING A TYPICAL 25-ACRE COAL MINE IN EASTERN
KENTUCKY UNDER KENTUCKY PERMANENT REGULATIONS**

	Prior to OSM	Interim Regulations	Final Regulations
1. Base Maps	\$ 100	\$ 100	\$ 100
2. Environmental Survey	400	600	800
3. Material Balance	200	300	300
4. Hollow Fill Design	200	300	1,000
5. Surface Water Quality Plan (includes one dam)	800	1,000	2,000
6. Core Drilling	0	0	3,000
7. Background Water Quality Data	0	200	5,000
8. Revegetation Plan	100	100	1,000
9. Land Use	0	100	200
10. Preblasting Surveys (5 houses)	0	500	500
11. Miscellaneous Engineering	400	500	3,000
12. Administrative	200	300	1,000
TOTAL	\$2,400	\$4,000	\$17,900

SOURCE: Paul D. Nesbitt, Nesbitt Engineering, Inc., Lexington, Kentucky, February, 1983.

Kentucky Small Operators Technical Assistance Project, Inc.

The development of a program to assist small operators in Kentucky was precipitated by the passage of the federal Strip Mine Act of 1977. In the spring of 1978, while drafting the state's first statute to comply with the new federal surface mining act, it became apparent to Natural Resources and Environmental Protection Cabinet officials that the stringency of PL 95-87 might drive small operators out of business. Therefore, the basic issue facing Kentucky state government was whether or not an attempt should be made to try to maintain the small operator as a separate and independent entity in the industry. The most pressing need at the time seemed to be a good faith effort to help the small operator meet the increasingly numerous and complicated permitting requirements of PL 95-87.

The issue was resolved in the 1979 Extraordinary Session of the Kentucky General Assembly, when legislation establishing an assistance program for small operators was enacted. The legislation, introduced as HB 38, and codified as KRS 350.450(4), called for the Natural Resources and Environmental Protection Cabinet to "adopt programs, regulations, and procedures designed to assist the small coal operator with permitting and environmental protection performance standards for strip and underground coal mining operations." The specific mandate of the legislation was twofold: that the program concentrate on the elimination of delays in the permitting process through special review of small operators' permit applications and that access to additional technical services that small operators would find helpful during the permitting process be provided. To meet the requirements of the legislation, the Natural Resources and Environmental Protection Cabinet established a special internal administrative program to review small operator permits and established a private corporation, the Kentucky Small Operators Technical Assistance Project, Inc., an independent, non-profit, non-governmental corporation whose sole purpose was to provide technical assistance to the small operators.

Incorporation and Structure

The Kentucky Small Operators Technical Assistance Project, Inc. (KSOTAP, Inc.) was incorporated on June 12, 1979 as a not-for-profit corporation under KRS 273.161. The sole incorporator was Eugene F. Mooney, Secretary of the Natural Resources and Environmental Protection Cabinet. The corporate articles and bylaws called for a board of directors consisting of not more than seven nor less than three persons. The initial board of directors was appointed by Natural Resources and Environmental Protection Cabinet officials. However, the articles of incorporation provided that all subsequent boards be self-appointing. The board of directors was given the control and management of the business, funds, and property of the corporation.

KSOTAP, Inc. was an independent and autonomous agency, over whom the Natural Resources and Environmental Protection Cabinet's only source of influence was its budget. This arrangement was chosen because Secretary Mooney felt the need for an "arms length" relationship between KSOTAP, Inc. as a technical assistance entity and the Natural Resources and Environmental Protection Cabinet as a regulatory entity.

Corporate Purpose

At the time the Natural Resources and Environmental Protection Cabinet began formulating the assistance program for small operators, federal regulations for the permanent program pursuant to PL 95-87 had not been issued. Cabinet officials were aware, however, that the federal act outlined the terms of a program called the Small Operators Assistance Program (SOAP). The SOAP program outlined in the act was very specific, in that it was targeted for operators mining 100,000 tons or less, and was limited to providing

direct financial assistance for laboratory analyses of core drill samples and preparation of hydrological statements. Realizing that completing a permit application required more comprehensive information than core samples and hydrological statements, the Cabinet established much broader goals for its assistance program.

Pursuant to the corporate articles, the said purposes of KSOTAP, Inc. as established by the Natural Resources and Environmental Protection Cabinet, included but were not limited to:

- providing technical assistance and guidance to small independent coal operators in Kentucky regarding the preparation of permit application under state and federal surface coal mining laws;
- advising and assisting said small operators regarding fiscal, insurance and bonding requirements;
- advising and assisting such operators in technically meeting the hydrological, biological and geological requirements of surface mining laws and regulations; and
- providing such other technical assistance as might be required by the legislated Kentucky and/or federal small operators assistance programs.

Accordingly, KSOTAP, Inc. was incorporated to assist small operators in various ways, but particularly in permitting. Although the specific manner in which assistance would be provided to operators was left up to KSOTAP, Inc. directors and staff, the Natural Resources and Environmental Protection Cabinet had certain expectations of the private corporation. Cabinet administrators conceived providing technical assistance through core technical staff based in Frankfort, with additional staff located in district offices throughout the state. They also anticipated providing warehousing and marketing assistance. The Cabinet felt that KSOTAP, Inc. could be a mechanism through which studies could be conducted to determine and anticipate the needs of small operators. Given the private and autonomous nature of the corporation, it was felt that KSOTAP, Inc. could also serve as an effective lobbying agent for small operators.

Funding

The Kentucky Small Operators Technical Assistance Project, Inc. was funded by a grant from the Natural Resources and Environmental Protection Cabinet. Although this was the means chosen to implement the mandate of HB 38 [KRS 350.450(5)], continued state funding for the private corporation was never contemplated. Cabinet administrators foresaw KSOTAP, Inc. eventually becoming self-sufficient.

The General Assembly appropriated \$300,000 for fiscal year 1979-80 for the purpose of establishing the small operators assistance program. When the bill was enacted an

additional \$300,000 was also given to the Cabinet by the State Planning Committee for the assistance program. Upon execution of a Memorandum of Understanding between KSOTAP, Inc. and the Natural Resources and Environmental Protection Cabinet in October, 1979, \$200,000 was granted by the Cabinet to the corporation to open, equip and staff four offices and to purchase vehicles. The corporation thereafter received monthly reimbursements from the Cabinet for its expenditures.

Program Specifications and Operations

The Kentucky Small Operators Assistance Project, Inc. designed a three-phased program to comply with Cabinet expectations. The first phase established the basic organization with which to render technical assistance, establish contact with qualified small operators, assist in the preparation of interim permits, and disseminate technical information to small operators. The second phase would have expanded the operations of the corporation in preparation for primacy under PL 95-87. This phase was to involve extensive analysis of the new permanent program requirements and establishment of an instructional program and outreach capabilities. The third phase would have involved implementing a program designed to perform various aspects of the federal SOAP provided in the federal act which were not anticipated to be funded by the federal government.

KSOTAP, Inc. was not in existence long enough to implement its three-phase program. During its period of operation the corporation concentrated on helping to facilitate permit applications from small mine operators through the Natural Resources and Environmental Protection Cabinet's technical review process. Applications which were lacking in some minor technical matter could be sent to KSOTAP, Inc. for review rather than returned to the applicant. KSOTAP, Inc. personnel could correct minor technical problems such as insufficient information. According to Cabinet officials, applications processed through KSOTAP, Inc. were then "yellow-tagged" and given priority consideration when returned to the Division of Permits within the Cabinet. Thus, the review time for the applicant was reduced.

Existing Energy Program

By Executive Order No. 80-473 (Appendix D), on June 17, 1980, Governor Brown transferred the Small Coal Operators Technical Assistance Project from the Natural Resources and Environmental Protection Cabinet to the Energy Cabinet. Practically speaking, all funds for the permitting technical assistance program were transferred to the Energy Cabinet by the 1980 budget (House Bill 931). A provision in that bill appropriated \$448,500 and \$472,500 to the Energy Cabinet for fiscal years 1980-81 and 1981-82, respectively. Executive Order 80-473 modified the budget bill by reallocating \$158,500 of the appropriation in fiscal year 1980-81 and \$167,400 of the appropriation in fiscal year 1981-82

back to the Natural Resources and Environmental Protection Cabinet for administration of its program under KRS 350.450(4). Therefore, the Energy Cabinet program was funded at \$290,000 for FY 1980-81 and \$305,100 for FY 1981-82. The appropriations bill enacted by the 1982 General Assembly (HB 295) reduced the appropriation to \$162,300 in fiscal year 1982-83, and \$177,200 in fiscal year 1983-84. It is important to note here that neither appropriation bill nor executive order made any attempt to modify KRS 350.450(4) to take into account any changes in program accountability made by the transfer of funds. The net result was to leave the Natural Resources and Environmental Protection Cabinet with the responsibility for a permitting technical assistance program for which the major funding had been transferred to the Energy Cabinet.

Since the time of transfer, there has been no formal administrative relationship between the Energy Cabinet and the Natural Resources and Environmental Protection Cabinet in the operation of the program. Administration of the program was placed under the Energy Cabinet's Division of Coal Development. The emphasis of the technical assistance program when administered under the Natural Resources and Environmental Protection Cabinet through the Kentucky Small Operators Technical Assistance Project, Inc., was on permitting assistance. The Department of Energy has since dissolved the private corporation and changed the focus of the program to emphasize broader technical assistance, particularly marketing assistance.

Program Goals and Objectives

The Energy Cabinet has stated that the overall goal of the technical assistance program is to keep small operators in business. Program objectives include assisting coal producers, especially those producing no more than 200,000 tons per year, "in dealing with problems of production, marketing, finance, leasing and regulations." Assistance is given through:

- providing general information;
- technical production advice;
- suggesting ways to improve operations; or
- facilitating communications with regulatory agencies.

Program Operations

The Small Operators Technical Assistance Program (SOTAP) is operated through four field representatives who work out of offices in Pikeville, Hazard, Middlesboro and Madisonville. Operational control and oversight is provided by a program manager located in the Cabinet's central offices in Lexington. According to interviews with the field representatives, contact with coal operators is established in various ways, such as:

- through lists obtained from the Department for Mines and Minerals and the Natural Resources and Environmental Protection Cabinet;
- through suggestions from inspectors from the Natural Resources and Environmental Protection Cabinet and the Department for Mines and Minerals;
- through suggested names from consultant engineers;
- through suggested names from contacts made with larger coal companies;
- through suggestions from other coal operators; and
- through random stops at mine sites.

Ideally, once potential clients have been identified, field representatives visit mine sites to inquire about problems and offer assistance. The initial contact with an operator is usually concerned with making introductions and providing background information on the program. On subsequent visits, however, the field representatives offer assistance in just about any aspect or activity pertinent to the operation of a coal mine. Among the types of assistance provided to operators, according to the representatives and the field reports they submit to the central office, are assistance in:

- filling out reports and statements to be sent to regulatory agencies;
- applying for the federal SOAP program;
- applying for the TVA small operators assistance program;
- identifying markets and contacting potential buyers;
- understanding new permitting requirements;
- dealing with bond procedures, forfeiture and release;
- locating means to transport coal;
- providing referrals on engineering and other technical problems; and
- communicating with regulatory agencies.

The eastern and western Kentucky coal-producing regions are diverse, with each area having different problems and needs. The two areas are not competitive in the same markets, since western Kentucky coal typically has a higher sulfur content. Energy Cabinet officials felt that bond release was a major problem in western Kentucky, and therefore established a high priority for this type of assistance in that area. The field person has been required to assess and research regional bond release problems. Most of these problems seem to relate to high sulfur spoil, which causes "hot spots," and other reclamation problems which result in difficulty in gaining bond release.

The Madisonville field representative is currently engaged in a reclamation project experimenting with various methods and materials. The two main objectives of this project, which entails a field-plot demonstration, are:

- to establish an economical method of checking erosion and filling rills and gullies, while converting them into vegetative waterways, without regrading and disrupting existing vegetation; and
- to establish practical methods for revegetating "hot spots."

Program management feel that practical and economical reclamation procedures will assist in easing the bond release problems which are common to large areas of western Kentucky, and which pose a hardship to small operators.

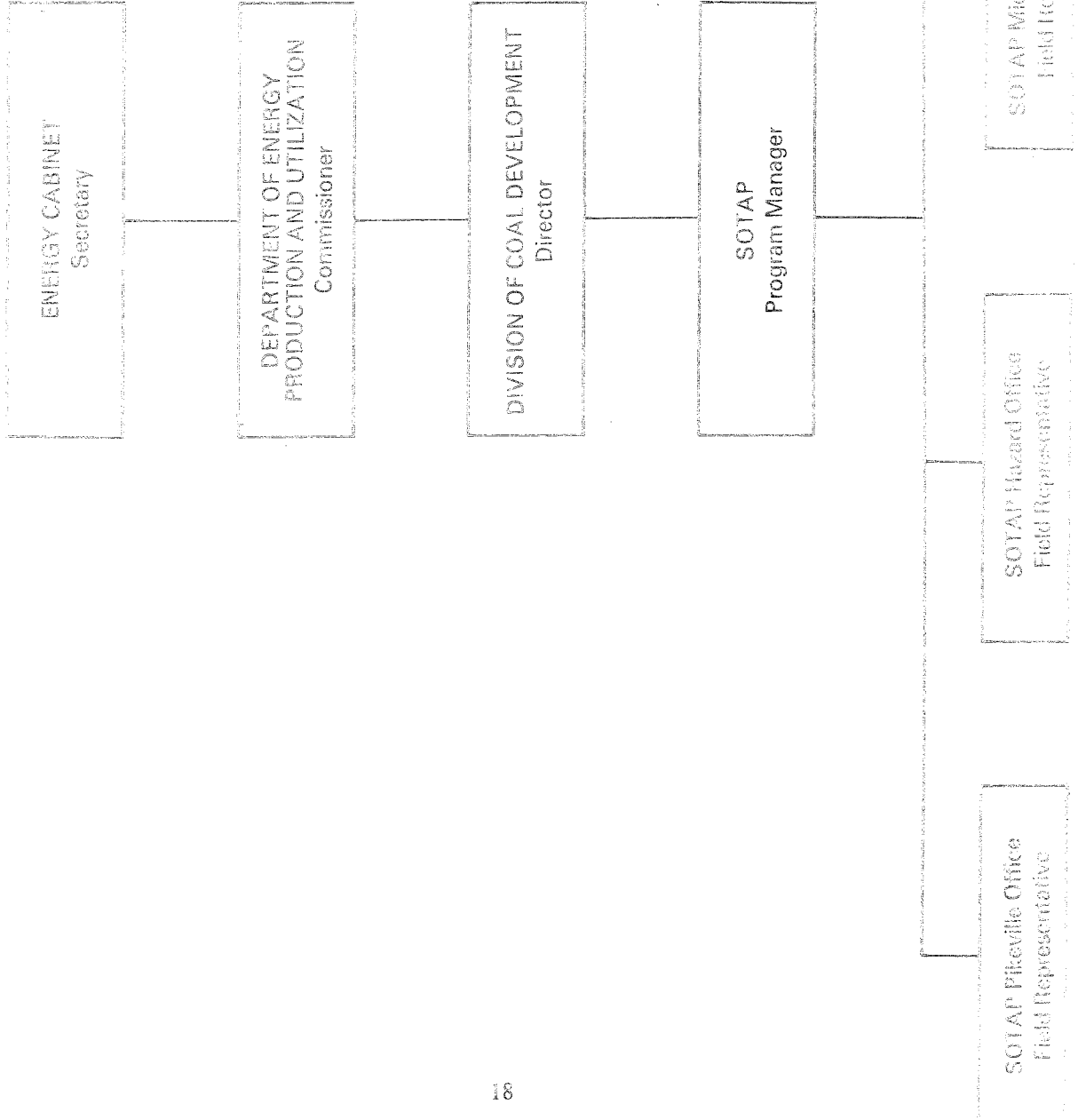
The Pikeville representative devotes approximately one-half of his time to working with small operators involved in a marketing cooperative. He provides the small operator with general information about regional coal markets, technical assistance on production and quality control, and technical assistance on regional transportation and shipment problems. This area of responsibility is given more weight on the work planning sheet outlining job duties of the Pikeville field representative than any other area of responsibility. The Pikeville field representative is a part-time employee of SOTAP and a part-time employee of the Kentucky Export Resources Authority (KERA). It should be pointed out that marketing western Kentucky high sulfur coal is even more of a problem, but in the Pikeville region there are more small operators than anywhere in the state and the advantage of rail transportation to east coast ports where low sulfur eastern Kentucky coal can be shipped to foreign markets.

SOTAP Position Descriptions

SOTAP is managed out of the Energy Cabinet's Lexington office by a Coal Development Project Manager. The position requires a minimum of a bachelor's degree plus four to five years of experience in coal mining administration or related fields, depending upon the nature of the degree. The project manager is responsible for supervising all project staff, coordinating all developments and elements of SOTAP, and monitoring the activities in the field. He must keep abreast of changes in statutes, regulations and policies on mining, safety, and other areas which affect small operators. He is also responsible for educating and training field personnel so they can provide appropriate assistance to coal operators. Finally, the project manager is responsible for routine financial matters relating to the program and he prepares and maintains operational records and technical reports on program operations.

The program is implemented through the four field representatives, who are titled Coal Development Technical Consultants. According to interviews and a review of existing

Energy Cabinet
Small Mine Operators Technical Assistance Program (SOTAP)
Organizational Chart



documentation, all four field representatives have basic responsibility for maintaining a field office: fiscal management, program management and most importantly, assisting small operators. Fiscal management duties require maintaining their vehicle, office and supplies and preparing and submitting monthly truck and expense reports. Program management duties require documenting services provided and information on small operators, and submitting weekly activity reports. Two of the four field staff are also required to assist other Energy Cabinet field representatives as needed. Providing small operators with assistance requires keeping abreast of central office policy changes, providing information transfer, making regular mine site visits, representing small operators, completing actual tasks for the small operator, advising small operators concerning problems and promoting preventive maintenance management.

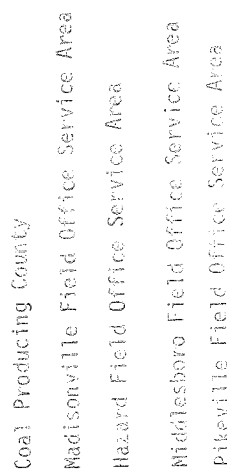
These individuals must also possess a bachelor's degree, plus three to four years of coal mining administration, depending on the nature of the degree. In all positions appropriate experience on a year-for-year basis may be substituted for the degree requirement. Organizational relationships within the Energy Cabinet are shown in the organizational chart, Figure 4.

Service Areas

The Energy Cabinet SOTAP program was initially established to serve small mine operators in all coal producing counties in Kentucky through its central office in Lexington and its four field offices in Madisonville, Middlesboro, Pikeville and Hazard. Figure 5 shows Kentucky's coal-producing counties and the actual counties or parts of counties served by SOTAP, according to Energy Cabinet records. Service to a county might be represented by a single contact or numerous contacts with small operators. Service is provided to other counties if requested, but the regions shown in Figure 5 are the primary service areas.

Many coal-producing counties are not served by SOTAP, because soon after assimilating the program from the Natural Resources and Environmental Protection Cabinet, Energy Cabinet management decided that not all coal-producing counties could be adequately served with only four field representatives. The field representatives were therefore told to concentrate their activities in the regions represented in Figure 5.

When the program was originally conceived it was thought there would be as many as eight field representatives, six of whom would be in eastern Kentucky. However, at the time of transfer to the Energy Cabinet there were only two field offices. Since then, attempts to expand the program through federal grants have been unsuccessful and state financial support has not been increased. These funding limitations influenced the Cabinet's decision to redraw and reduce the service areas. Although the Energy Cabinet assumes that the areas presently served are indeed where most small operators are to be

[illegible]

SOURCE: Kentucky Geological Survey; Kentucky Department of Energy

found, there remains the question of how many are not being served. The number of small operators within each service region at any given time is difficult to determine. However, the present number of SOTAP personnel is not sufficient to serve the needs of all potential clients, if it is assumed that there are at least 1,000 small operators (approximate number of federal SOAP applicants).

Kentucky Energy Cabinet Evaluation

In April, 1982, the Energy Cabinet's Office of Administration initiated an internal review of their Small Operators Technical Assistance Program, prompted in part by questions raised by legislators during the 1982 General Assembly. A report was published in October, 1982, that summarized findings relating to:

- program effectiveness, and
- management practices.

In addition to interviews with program staff, telephone interviews were made with a sample of approximately forty coal operators who had had recent contact with program field representatives. The key responses to the telephone survey are detailed in Appendix C and summarized as follows.

Approximately seventy percent regarded the program as good or excellent, with about eight-five percent expressing satisfaction with services received. In about half the cases, contact with program representatives was initiated by the client. Ninety percent thought that the program should be continued, although there was mixed opinion on the impact of discontinuing the program.

The Office of Administration made numerous suggestions for improving program management and operational effectiveness and pointed out that program needs tend to change with market conditions. Perhaps most interesting was its determination that program acceptance and services actually rendered to clients vary greatly by service region. There were four field representatives at the time the review was conducted. Two of the four seemed to be more widely accepted by the small operator community and consequently more effective than the other two. Action was subsequently taken to remove the least effective field representative.

Any assistance program, especially one that relies heavily on community outreach, is dependent upon the effectiveness and acceptance of its field representatives. Even if all four representatives are fully effective, there remains the question of how many clients they can serve in an efficient and effective manner. If there are approximately 1,000 small mine operators, most of whom would benefit from assistance in dealing with

regulatory requirements and marketing problems, how many field representatives would be necessary to fully implement a statewide program of comprehensive assistance?

Conclusions

PL 95-87, subsequently enacted state laws, wide variations in the price of coal, and continuous fluctuations in the bond market have created a host of problems for coal operators and anyone attempting to assist them. One question asked repeatedly as part of the LRC program review was, "What types of assistance does the small coal operator need the most?" Miners, consultants and industry representatives provided a wide assortment of answers. At one extreme, some thought small mine operators would need all the help they could get; at the other, some thought that small operators just wanted to be left alone and allowed to mine coal. Some of the needs of small mine operators have changed since the program was initiated in 1979 but the basic need for permitting assistance and permitting technical assistance is still one of the highest priorities.

In 1979 the need for coal was expanding and prices were increasing, but it was believed PL 95-87 would put many coal operators out of business, especially the smaller ones. The original SOTAP program was aimed primarily at helping provide technical assistance so that the small operator could better cope with the increasingly complex regulatory and permitting requirements being proposed and implemented by the U.S. Department of the Interior and the Kentucky Natural Resources and Environmental Protection Cabinet.

These requirements are still in the process of implementation and the Kentucky coal industry is still integrating them into its framework. The time and costs required to repermit all existing and prospective mines has been made more burdensome due to the energy slump and associated drop in coal prices. This condition has a more immediate and perhaps greater overall effect on small operators. The current downward trend in the demand for coal has deterred many coal operators from applying for the necessary permits to achieve compliance with the new requirements imposed by PL 95-87 because they are not presently mining coal. When the coal market recovers it can be anticipated that a large number of small operators will need permitting assistance.

Marketing assistance is of great help to small operators still mining coal under interim permits. Although this is not specifically mentioned in the enabling legislation found in KRS 350.450, it is mentioned in KRS 152A.125(1). Even if the market improves it is likely that small operators will always be in need of marketing assistance. This function was not incorporated into the enabling legislation, partly because it was not considered an appropriate activity to attach to the Natural Resources and Environmental Protection Cabinet.

CHAPTER III

OTHER PROGRAMS

There are numerous assistance programs available to small operators. Some are statewide and some are locally oriented. Almost all are funded by a combination of federal and state monies. Most fall within the jurisdiction of state agencies, such as the Natural Resources and Environmental Protection Cabinet, the Department for Mines and Minerals, and the Energy Cabinet, but many operate under the auspices of institutions of higher learning, such as junior colleges, private colleges and the University of Kentucky and its community colleges.

The programs are diverse. The majority are aimed at helping the small operator deal with government safety and environmental regulations. A few are research oriented, but in most cases practical assistance and advice is offered in the field. This chapter describes some of these programs for the purpose of illustrating how other organizations touch upon the Energy Cabinet's role of providing assistance to small operators.

Federal SOAP

PL 95-87 authorized a federal Small Operators Assistance Program (SOAP) to be administered by each state. It is designed to assist small operators with a total annual production of less than 100,000 tons in the preparation of hydrologic, geologic and laboratory data required under the permanent program regulations, and to collect and provide hydrologic information for permanent program application. The objectives of the program as outlined in the federal regulations are:

- to provide financial and other necessary assistance to qualified small operators; and
- to assure that the regulatory authority shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

The federal SOAP is funded by operational grants through the federal Abandoned Mine Land Reclamation Fund. PL 95-87 allows for annual funding of no more than \$10,000,000 from the Fund through September 30, 1993.

The federal SOAP was initiated in Kentucky in October, 1979. The first contract awarded under the program was in October, 1980. Since Kentucky has obtained primacy, the federal SOAP is funded on a 50/50 match basis by the state and the federal government.

Administration

The federal SOAP is administered by the Department for Surface Mining Reclamation and Enforcement within the Natural Resources and Environmental Protection Cabinet. The objective of the program, as defined in Cabinet literature, is to assist small operators in obtaining a permit by:

- providing qualified laboratories and consultants to collect, analyze and interpret hydrologic data on and off the mine site;
- providing qualified laboratories and consultants to analyze and interpret geologic information from bore hole, highwall, and observation wells;
- providing payment for qualified laboratory services; and
- providing regional background data for the laboratory and operator.

Assistance from the federal SOAP is available to any person who will mine 100,000 tons of coal or less per year under the permanent program. Assistance is available to both surface and underground mining operations.

Program Personnel

The federal SOAP is administered by an eighteen-person staff within the Natural Resources and Environmental Protection Cabinet. All are based in Frankfort. The staff includes:

- one program administrator;
- three professional engineers;
- one hydro-geologist;
- one geologist;
- one chemist;
- two civil engineer interns;
- one computer science intern;
- five administrative personnel;
- one administrative person with a forestry background; and
- one seasonal clerical employee.

A field representative is available in each of the Cabinet's seven regional offices to assist the small operator in applying for the program. These seven field representatives, however, have other duties in addition to their SOAP responsibilities and are assigned to the Division of Field Services. Only a portion of their time is charged against the Small Operators Assistance Program.

Program Operations

Assistance in filling out SOAP applications is provided free of charge by the field representatives or by the Frankfort office staff. To facilitate the process, effective September 1, 1982, the Cabinet began accepting SOAP applications in the regional offices rather than in the Frankfort office. The regional office reviews the application for eligibility, then assigns an inspector to monitor the program. Once the application is approved by the central office in Frankfort, a laboratory or consultant engineer is selected to prepare a statement of probable hydrological consequences and an analysis of test boring and core samples. Costs for lab work are paid by SOAP, but the program does not pay the costs of actual drilling of core samples. However, as of March 18, 1983, SOAP will begin paying for drilling of groundwater wells.

The program does not give money directly to the small operator. Payment for services rendered is remitted directly to the laboratory or consultant firm. Acceptable laboratory reports and analyses are returned to the small operator for incorporation in his permit application.

Federal regulations provide that the hydrologic, geologic and laboratory data collected from federal SOAP be compiled into a data bank as support data for the permanent program. The data bank will contain site-specific information on oil and gas records, geology, coal seams, climate, water quality and biology. This information will be provided free of charge to any operator applying for a permit in the same geographic area from which the data was collected, thereby reducing permitting time.

Program Outreach

State administrators of the federal SOAP feel that they have been successful in reaching their targeted clientele, even though there has been no concerted effort on the part of personnel in other divisions of the Cabinet to promote the program. As of December 31, 1982, the program had received 1,050 district applications, of which 848 were approved, seventeen denied, and 144 withdrawn; forty-one are pending. These applications represented 677 individual coal companies, 560 of which were determined to be eligible.

Abandoned Mine Lands Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 established a trust fund known as the Abandoned Mine Reclamation Fund. The fund derives its revenues primarily from an assessment on coal production known as a reclamation fee. All coal mine operators are required to contribute a fee of thirty-five cents per ton of surface mined coal, and fifteen cents per ton of underground mined coal to the federal Department of the Interior. The fund is then redistributed by the Department to the states for various reclama-

tion programs. For instance, fifty percent of the fees collected annually in a particular state are allocated to that state for the federal Small Operators Assistance Program, the Abandoned Mine Lands Program, and the Rural Abandoned Mine Lands Program. The remaining fifty percent of the funds may be expended in any state at the discretion of the Secretary of the Interior, to accomplish the objectives of PL 95-87.

Kentucky's Abandoned Mines Lands (AML) Program is administered by the Division of Abandoned Mine Lands within the Natural Resources and Environmental Protection Cabinet and is responsible for:

- design and supervision of state-funded reclamation and restoration projects;
- design and supervision of reclamation projects funded solely by the federal government; and
- reclamation of mined lands on which bond has been forfeited.

Funding

In accordance with PL 95-87, KRS 350.550 established an Abandoned Mine Reclamation Fund to be administered by the Natural Resources and Environmental Protection Cabinet. Deposits to the state fund include but are not limited to:

- reclamation fees allocated to the state from the federal Abandoned Mine Reclamation Fund;
- any income from, or user charge on or for, land reclaimed under the AML program; and
- donations, by persons, corporations, associations, government entities or foundations to the AML program.

States are not entitled to receive money from the Fund until they have adopted a statewide plan acceptable to the Office of Surface Mining within the Department of the Interior. Kentucky qualified for receipt of the funds upon receiving primacy, at which time five years of contributions by Kentucky coal operators had accumulated to an estimated \$140 million. Pursuant to PL 95-87, one-half of Kentucky's contribution is to be returned to the state for reclamation purposes.

Administration

The 1980 General Assembly directed the Natural Resources and Environmental Protection Cabinet to make special provisions for participation by small mine operators in the Abandoned Mine Lands Program [KRS 350.450(4)(b)]. Small operators by Kentucky state law are those mining less than 200,000 tons a year (in contrast to the 100,000 ton-per-year limit under the SOAP program). KRS 350.450(4)(b) requires:

1. that lands acquired or reclaimed by the state containing coal, coal refuse or other marketable minerals which should be removed in order to maximize the utilization, recoverability or conservation of solid fuel resources or to protect against adverse water quality impacts and which, once reclaimed, cannot be disturbed again by mining, shall be reclaimed by small operators unless the cabinet determines, after advertisement and advance opportunity to bid, that the reclamation project cannot be performed by the small operator bidders;
2. that the cabinet shall establish procedures for maximizing participation by small operators in all reclamation projects including:
 - a. designing and establishing project specifications and setting forth in the annual request for federal funding under the state reclamation plan not less than twenty percent (20%) of said projects on a cost basis to be performed by small operators;
 - b. advance advertising, soliciting, evaluating bids and awarding contracts on all state reclamation projects for small operators.
3. In the event no bids are submitted by small operators for small operators projects, said projects will be thereafter open for public bidding and no longer designated as small operator projects, but shall satisfy that portion of the twenty percent (20%) set aside.

Kentucky's first grant request for funds from the federal AML Fund was approved by the Office of Surface Mining on May 18, 1982. The value of projects submitted and approved was \$14.5 million for 38 projects. The Division of Abandoned Mine Lands has a maximum of three years in which to implement these projects. Program administrators expect most of these projects to be bid and contracts awarded in the spring of 1983. A second grant request for approximately fifty-three projects valued at approximately \$25 million is under preparation.

Pursuant to state statute, twenty percent of the money received from the federal AML fund for reclaiming abandoned mine lands will be set aside for small operators. The set aside will constitute, according to the Division of Abandoned Mine Lands, twenty percent of the amount allocated for reclamation construction purposes only, not twenty percent of the entire federal allocation. This figure would exclude that part of the set aside used for planning and design purposes. Those operators whose names appear on the small operator list maintained for the federal SOAP program in the Natural Resources and Environmental Protection Cabinet are eligible to bid on the reclamation projects. The state's Abandoned Mine Lands Program provides an opportunity for small operators to keep equipment operating and maintain cash flow during periods of non-mining. Small operators are encouraged to bid on all projects offered under the program.

Kentucky Natural Resources Information System

PL 95-87 requires that before a mine site can be permitted, comprehensive hydrologic, geologic and laboratory data be gathered. This data-gathering phase is both costly and time-consuming. To help solve this problem, the Natural Resources and Environmental Protection Cabinet is currently developing an information resource center, called the Kentucky Natural Resources Information System (KNRIS). KNRIS, located within the Lands Unsuitable for Mining Program in the Cabinet's Frankfort headquarters, consists of three major components:

- a map and document library;
- a remote sensing support center; and
- an automated geographic information system.

The map and document library is called the Information Resource Center (IRC) and contains a broad spectrum of environmentally related reference material relevant to the eastern and western Kentucky coal fields. This information has been gathered from federal, state and local government agencies and from universities and private sources. All resource material maintained by the IRC, though non-circulating, is available for public use.

The National Aeronautics and Space Administration (NASA) has launched a series of LANDSAT satellites, which orbit the earth approximately fourteen times per day. These satellites relay digital images of the earth to receiving stations on the earth's surface. The remote sensing support center maintained within KNRIS has the capabilities for processing and displaying LANDSAT and other remotely sensed data generated by airplane surveillance flights. These capabilities permit the classification of remotely sensed data for the production of land use displays and other geographic information maps.

The automated geographic information system within KNRIS contains the software and computer graphics hardware necessary for the input, manipulation and display of digital geographic information. The system maintains a sophisticated series of programs capable of carrying out a wide range of analyses of digitized map files.

Natural Resources and Environmental Protection Cabinet Permits

In 1978 the Natural Resources and Environmental Protection Cabinet implemented a special Priority Permit Review System within its Division of Permits to meet the mandate of KRS 350.450(4), "to eliminate delays in the processing of permits." A team of four technical permit reviewers reviewed permit applications from small operators. In addition, a specific person in each of the seven area field offices was assigned to assist small operators in filing a permit application and to act as a special liaison to increase communication with the small operator.

In Executive Order #80-473, transferring the Small Coal Operators Technical Assistance Project to the Energy Cabinet, Governor Brown transferred \$158,500 in fiscal year 1980-81 and \$167,400 in fiscal year 1981-82, and the personnel associated therewith, back to the Natural Resources and Environmental Protection Cabinet. Although not spelled out in the executive order, these funds were to be used for the administration of the Priority Permit Review System.

The Priority Permit Review System allows permits submitted by small operators to be given a higher priority than others in the application process. Since a majority of permit applications received are from small operators, the system is not very meaningful. When Kentucky SOTAP, Inc. was in existence, it was the policy of the Cabinet to give priority only to small operator permits which were reviewed by SOTAP, Inc.

The Cabinet was forced to develop an entirely new priority system when the permanent program became effective January 18, 1983. Three thousand two hundred comprehensive permanent program applications had been received by the Cabinet at that time. Within this group, there were applications for both new and existing operations.

The Priority Permit System is very complex, because of the varying size of operations and the amount of time a company could be expected to remain at a particular location. There are subdivisions within each of four overall priority areas. For instance, the number one subpriority within the top priority category is the two-acre or less mine site permit. By regulation, the Cabinet must complete review of these applications within thirty days. New permits, by statute, must be reviewed within sixty-five working days, so they also receive a high priority. Additionally, permits with special environmental problems and those for sites 200 acres or larger receive a high priority. The justification for reviewing applications for larger sites first is that they will be at that location for several years and the Cabinet wants to regulate them under the permanent program as soon as possible. All underground mines constitute the next major priority category.

The small mine operator's permanent permit application will probably be reviewed last under the present arrangement. However, this is to his advantage. Many of the sites they are currently operating will be mined out by the time the Cabinet expects to begin reviewing their applications, presently projected to be March 15, 1984. This means an operator who has applied for a permanent program permit can continue to operate under the more lenient interim program regulations. Operators will not be required to supply the Cabinet with the hydrological and geological baseline data, which is the most costly and time-consuming to gather, until November, 1983. Nor will they be required to post bonds under the permanent program regulations, which generally require larger acreage fees. Reclamation requirements are generally not as rigorous under the interim regulations as they are under the permanent program. The Cabinet says it is not sacrificing quality in mining or reclamation by adopting these policies. The differences in the interim and permanent program regulations are primarily in the areas of permitting, bonding and post-mining

reclamation planning. The approach adopted by the Cabinet was mandatory, given the enormous number of applications it has to review. It also allows the small operator more time to adjust to the permanent program and delays the time when they are required to begin the collection of hydrological and geological data.

The Division of Permits also attempts to work with consulting engineers to reduce time-consuming delays when revisions or amendments to permits are necessary. The Division will contact the engineer by telephone and will accept clarifications and some minor corrections in this manner. Amendments may also be mailed in and simply added to the permit application. If it is necessary to return the permit application to the operator or his engineer, the Division will inform them of the nature of the information required, which allows them to begin working on the problem area immediately.

Interviews with engineers, miners, association representatives and even personnel from within the Cabinet revealed criticism of permitting procedures. Many of those interviewed felt that some of the technical staff reviewing permit applications in Frankfort lacked the experience and expertise needed to make a competent review of the complicated mining and reclamation plans submitted to them. They cited a lack of consistency in what is approved and what is denied among different applications.

Department of Mines and Minerals

Upon passage of the federal Mine Safety and Health Act in 1969, subsequently amended in 1977, the federal government made money available to the states for on-site training for mine operators and workers. Following the 1975 Scotia Mine disaster, the 1976 Kentucky General Assembly enacted legislation that established mandatory health and safety certification requirements for mine operators and employees in the state (KRS Chapter 351). The Department of Mines and Minerals was given responsibility for implementing a comprehensive training and examination program to assist mine operators and employees in meeting the new certification and training requirements.

In May 1971, the Department of Mines and Minerals entered into an 80/20 matching funds agreement with the federal Mine Safety and Health Administration (MSHA) to provide training for both surface and deep miners. This arrangement is still in effect. Mines and Minerals officials point out that Kentucky was first among the states to establish a comprehensive health and safety program with MSHA, and at one time received one-fourth of all the money allocated to states which were involved in the program. Prior to May 1982, Kentucky received approximately \$1.5 million from MSHA for implementation of the health and safety program. However, federal funding for the program has now decreased by over sixty percent (\$493,000 for the current fiscal year).

Initially the Department of Mines and Minerals utilized the state's vocational

schools and institutions of higher education to assist with the training. Training centers were funded by the Department at Pikeville College, Morehead State University, and Madisonville Community College. As a result of the reduction in funds received from MSHA, the Department has had to discontinue its involvement with the colleges and vocational schools.

The Department also offers mine safety and health courses at each of its six district offices. This program employs fifteen teachers, consisting of ten mining instructors and five electrical instructors. Twelve instructors are located in eastern Kentucky; three are located in western Kentucky. The Department has classroom facilities in each district office, but on-site training at the mine is made available when necessary. The training provided by Mines and Minerals is principally safety training, including basic courses in electricity. Special classes in such areas as blueprint reading are provided upon request. All training programs are provided free of charge with all class materials and equipment furnished.

Mines and Minerals does not provide required safety training to all of the miners and mine employees in the state. Subject to approval of the federal government, some coal companies have their own safety programs for training their employees. Training is also offered, for a fee, through private organizations established for the purpose of training. The Department feels that it serves most of the small miners in the state, since small operations can neither afford to implement their own training programs nor contract with a private company to provide the required training.

U.S. Soil Conservation Service

The United States Soil Conservation Service (SCS) offers certain material resources as well as the technical expertise needed to develop and manage conservation and reclamation projects. The Service can provide maps, designs, surveys and layouts of the affected area as well as engineering assistance on waterways, diversion ditches and tile drainage.

The Soil Conservation Service is responsible to the United States Department of Agriculture. PL 95-87 requires that the Secretary of Agriculture arrange for the reclamation of rural abandoned mine lands through conservation treatment and agricultural productivity of lands. The federal act requires that the Secretary implement the rural abandoned mines program through the U.S. Soil Conservation Service and provides that the program be funded from the Abandoned Mine Reclamation Fund.

The Soil Conservation Service covers the entire state. An office is located in each county, except in two or three cases where one office serves two smaller counties. Manpower in the county offices is very limited, generally consisting of only the District Conservationist and a conservation technician. It is rare that a county office contains more than

three full-time professionals. However, this still amounts to an average of approximately ninety persons available for assistance in Kentucky's coal-producing counties.

The Rural Abandoned Mine Program (RAMP) money that the SCS receives from the federal Abandoned Mine Reclamation Fund may only be used for reclamation of rural abandoned mine lands. The program is run independently of the Abandoned Mine Lands Program that is operated by the Natural Resources and Environmental Protection Cabinet. The SCS is responsible for planning and design of the projects selected for reclamation; then a work contract is let on a competitive bid basis. Anyone having proper operating equipment is eligible to bid on RAMP projects.

Personnel at the Soil Conservation Service have expressed a willingness to assist any coal operator, large or small, who can benefit from their services. They prefer to become involved at the pre-mining stage, so they can assist with planning the operation from the testing of soil for prime farm land to restoration of land as required by the permanent program. Program personnel said that the most important service they can offer which small operators have not taken advantage of is in the area of engineering. While they cannot actually perform engineering activities for which certification is required, the SCS feels they can provide basic engineering service and assistance.

The Soil Conservation Service also has a plant materials program, which specializes in plants used for reclamation. The center for these activities is in Quicksand, in Breathitt County, Kentucky. Over forty varieties of plants to be used to reclaim surface mined areas have been developed. Reclamation assistance and advice is rendered on site and free of charge. All plants released by the plants materials program are also available to landowners or land users at no charge.

Soil Conservation Service personnel in both eastern and western Kentucky say that thus far most of their contact with the coal industry has been with large operators. Two reasons have been offered for this:

- the small operator is not aware of their availability, and
- small operators are distrustful of any state or federal governmental agency.

Kentucky Geological Survey

The Kentucky Geological Survey (KGS) is a repository for geological data gathered through continuous research and studies performed throughout the state. The duties of the KGS, as spelled out in KRS 151.030, are to "make a continuing geological study of the state and perform such other functions as are directed toward the development of the mineral resources of the state." KGS is an ex-officio member of the Kentucky Energy Cabinet and advises the Cabinet in a number of geologic areas including coal.

The KGS has hundreds of files containing geological and topographical data on specific areas in Kentucky. Much of the data contained in KGS files was originated from within the Survey through staff research and evaluations, and can be used by coal mine operators for the purposes of exploration, development, planning and permitting. KGS officials report that the Survey receives over one thousand information requests annually from coal operators.

The KGS is currently compiling core drilling information for both eastern and western Kentucky. In addition, it is developing coal thickness and quality analyses of coal beds in eastern Kentucky. When completed, the outcrop, thickness and quality of coal in eastern Kentucky coal beds will be made public. The KGS is also negotiating with the Natural Resources and Environmental Protection Cabinet for entering and maintaining information gathered from permanent program permits and from federal Small Operators Assistance Program (SOAP) permits in KGS data files. This site-specific data pertaining to oil and gas records, geology, coal seams, climate, water quality and biology will then be made available for public use.

PL 95-87 requires that hydrological and geological information taken from SOAP applications be compiled and supplied to other operators upon request; however, this data is now contained in individual SOAP files within the Natural Resources and Environmental Protection Cabinet. The availability of the SOAP data, permit data and other KGS data from a centralized computerized data base will eliminate the cost of repeating efforts already expended by others in gathering data pertinent to the mine permitting process.

Tennessee Valley Authority

The Tennessee Valley Authority (TVA) provides assistance to small mine operators and small coal sales companies to help them remain competitive. Operators qualifying for this program must produce less than 200,000 tons of coal per year and must employ under fifty persons. In addition, their companies must be independently owned and operated. Although TVA's assistance program was established for potential suppliers to the utility's coal-fired steam plants, any coal operator qualifying under the guidelines is eligible to receive assistance, especially in the areas of purchasing and technical assistance.

TVA's program is operated out of its Norris, Tennessee Office, but technical and other professional support staff are available in other TVA divisions in Knoxville and Chattanooga. Upon request, TVA personnel will make an on-site visitation if necessary, within two or three days, to consult with the small operator and/or his professional consultants on the technical aspects of the mining operation. TVA personnel say that acceptance of and participation in the program have been good.

Purchasing Assistance

TVA has twelve coal-fired steam plants located in Tennessee, western Kentucky and Alabama, for which it purchases an average of thirty million tons of coal a year. The utility is still committed to making spot purchases of coal and, according to a report in the February 12, 1983, *Courier Journal*, is purchasing 5,000 to 10,000 tons of coal a week on the spot market from producers in western Kentucky and Indiana, and 5,000 tons of coal a week from producers in Appalachia.

TVA publicly advertises for its coal purchases and lets contracts on a competitive bid basis. On occasion the utility sets aside all or a portion of the purchase for bidding by small operators if the opportunity to do so is there. However, set asides are not guaranteed.

TVA's purchasing assistance is also available in other forms, including:

- free advice and consultation on purchasing procedures, contractual terms, competitive bidding procedures, market availability, etc.;
- purchases of coal on an accelerated payments schedule wherein sixty to eighty percent of the invoice amount on spot and term purchases is paid within at least fourteen days from TVA's receipt of the invoice;
- contingency clauses in contracts which allow the small operator to offer coal to TVA prior to obtaining necessary financing to perform the contract and which permit voiding the contract in the absence of necessary financing without damages to the operator; and
- contingency clauses in purchase contracts with small mine operators which minimize risk by providing for cancelling the contract under certain situations without assessment of damages.

Technical Assistance

TVA offers technical mining and reclamation assistance through its Office of Natural Resources. The technical assistance aspect of its program is focused on aiding small coal operators in complying with mining and reclamation laws. TVA staff are available to meet with the operator either on-site or at TVA offices to provide free assistance in:

- coal geology;
- coal quality and reserves;
- mining engineering;
- revegetation;
- soil analysis;
- blasting;
- water quality; and
- hydrology.

Education Workshops

In the late '70's, one aspect of TVA's small operators assistance program was the funding of workshops and seminars with educational institutions in various coal mining states. One such program was with the University of Kentucky. TVA says that this program and others like it were well accepted. However, this type of assistance was discontinued in 1980 because of lack of federally appropriated funds. The coordinator of TVA's assistance program for small operators feels that this had been a successful venture and regrets having to discontinue it. He suggested that, since the funding necessary to carry out the previously broad-based education program is not available, TVA would be interested in the possibility of implementing a similar program on a limited and case-by-case basis, if a state so requested. He added they would also be interested in considering a joint effort with a state, perhaps with the assistance of the federal Office of Surface Mining.

UK-IMMR

One of the functions of the Institute for Mining and Minerals Research (IMMR) at the University of Kentucky is providing technological support to the coal industry in the state. IMMR has a comprehensive research and development program which is designed to promote the use of Kentucky's energy resources. The Institute is the prime contractor for the Energy Cabinet for research and development, and for operation of the Kentucky Center for Energy Research Laboratory in Lexington. Through its Office for Informational Services and Technical Liaison (OISTL), IMMR also conducts informational seminars and technical short courses at various locations in the state.

At one time the University of Kentucky operated an assistance program designed for small operators. This program was funded by TVA, IMMR, and the Kentucky Energy Cabinet. The basic concept of the program was to provide continuing education on regulations, laws, citations and compliance with all parts of mining permit applications. Seminars were also held on day-to-day mining activities. Training sites were established in Madisonville, Grayson, Jackson, and Harlan. Once areas of interest were identified, instructors were secured and seminars or classes were scheduled for evening hours in coal mining areas. UK officials report that response to the program was good in some areas; however, there was never overwhelming attendance. This assistance program ceased when TVA funding ran out; however, the University still employs the same concept in its mining education classes and seminars today. These are presently established and coordinated through the UK Office of Continuing Education and IMMR's OISTL.

The major objective of OISTL is disseminating information and providing technical assistance to coal miners through continuing education. Short courses and seminars are offered periodically throughout Kentucky. Some of OISTL's courses are

designed to give participants hands-on experience with new or advanced mining and reclamation techniques. Other courses offer specific information on interpreting and complying with state and federal regulations. The prices of OISTL's courses range from \$30 for simple courses to \$200-300 for the more technical courses. The main complaint, according to UK, has been that fees charged for the continuing education program are too high for many small operators.

College Programs

Kentucky's colleges and universities have responded to the increased interest in employment within the mining industry with a wide array of degree offerings and training programs. Within the last several years numerous mine reclamation and technology courses have been established at several of the private and public colleges and universities in the vicinity of Kentucky's coalfields. The University of Kentucky offers courses on its main campus and at Madisonville, Hazard and Southeast Community Colleges. Morehead State University, Western Kentucky University, Cumberland College, Pikeville College, Union College and Lees Junior College also have degree programs. All of these programs can benefit both large and small coal operators. For the most part, existing programs address the need for preparing students who have little or no experience in mining for various careers within the industry, and are not necessarily tailored to meet the needs of individuals already in business.

Funding for coal-related education programs has come from various sources. In addition to direct state support, the Institute for Mining and Minerals Research at the University of Kentucky has contributed to many of these programs. Funds in support of state coal-related education programs have also come from the Appalachian Regional Commission, the Comprehensive Employment and Training Administration, the Mine Safety and Health Administration, and some private companies.

Pikeville College-CITAC

One of the more comprehensive programs for assisting coal operators was the Coal Industry Technical Assistance Center (CITAC) at Pikeville College. CITAC was primarily funded by the Appalachian Regional Commission (ARC) with supplemental funding from Pikeville College and UK's Institute of Mining and Minerals Research. CITAC provided small coal operators in the Pikeville area with a variety of assistance, including information and advice about:

- dealing with complex governmental regulations;
- understanding statutes and regulations;

- filing permits;
- avoiding violations;
- remedying violations; and
- new technology.

With the passage of the federal strip mine law, Pikeville College felt that local coal operators needed accessible information, training and technical assistance in safety, securing permits, regulation compliance and new coal technology. CITAC was created to provide three basic components:

1. an information resource center on the coal mining industry;
2. workshops and seminars relevant to industry problems; and
3. an outreach program of on-site technical assistance in response to specific requests.

The ten-person CITAC staff were all members of the faculty of Pikeville College, with expertise in the areas of coal law, safety training, mine water quality, reclamation engineering, computer programming, general library resources, and public relations.

A 1981 CITAC evaluation, also funded by ARC, cited the following accomplishments:

- over forty workshops and seminars involving between 250-300 different coal companies on such legal issues as legislation, permitting procedures, and violations; and such technical issues as coal cleaning, water quality, mine illumination, mine ventilation, mine blasting, reclamation and revegetation, and mine safety;
- individual technical consultations, typically on-site, with over 200 individuals;
- establishment of the most comprehensive resource and informational center in the Pike County area; and
- establishment of "teamwork" relationships with federal and state agencies, coal operators and professionals.

Kentucky Export Resources Authority, Inc.

The Kentucky Export Resources Authority, Inc. (KERA) was incorporated on March 3, 1981, as a non-stock, non-profit corporation in accordance with KRS Chapter 273. The sole incorporator of KERA was William B. Sturgill, Secretary of the Kentucky Energy Cabinet. The corporate purpose, as stated in the Articles of Incorporation, is:

to encourage and facilitate the production and sale of Kentucky coal and other products produced or grown in Kentucky; to buy and sell and to contract for the purchase and sale of coal and other products; to

facilitate an orderly process of contracting for the production and sale of Kentucky coal and other products produced or grown in Kentucky.

In May, 1981, KERA spearheaded the establishment of the Big Sandy Coal Producers Association, a coal marketing cooperative in eastern Kentucky. This co-op was developed specifically to assist in marketing of coal produced by small coal mine operators. Its focus has been on the export market. Reportedly, the Association consists of approximately twenty coal mining operations, each producing less than 300,000 tons of coal per year, who, thus far, have fulfilled a 450,000-ton contract with an Italian utility.

KERA was initially funded with a \$100,000 grant from the Appalachian Regional Commission. The corporation has explored the feasibility of establishing similar small operators cooperatives in other coal mining areas of the state. At the present time, however, these efforts have been postponed, due to the worldwide energy glut.

CHAPTER IV

SURVEY OF SMALL MINE OPERATORS

The Kentucky Energy Cabinet's Small Operators Technical Assistance Program (SOTAP) is a regionalized statewide effort to provide a range of services and help to small coal operators, who typically mine less than 200,000 tons a year. Nobody is sure how many small mine operators there are, primarily because the number of tons mined per year is so dependent upon a number of different variables. For example, the spot price of coal can vary widely in any particular year. The higher the price the more people decide to mine coal. Also, there are different perceptions about who small mine operators are. Depending upon production figures, a miner may be large, small, or perhaps only a prospective miner, in that he has been idle but would mine under differing regulatory conditions or if he were offered some assistance.

Notwithstanding the problems of identification, it is necessary to gain some first-hand information from the client population, in order to assess their characteristics, needs, opinions and recommendations as they apply to programs designed to help them. With this in mind, a survey questionnaire was developed to gather this information by mail from as many small mine operators as could be identified.

Survey Methodology

The first survey methodology problem to resolve is client identification. The Energy Cabinet has not generated its own comprehensive list of potential SOTAP clients. Instead there is a SOTAP list of about 300 clients actually contacted. This list, which is not comprehensive, was used by the Energy Cabinet's Office of Administration to pick the 38 clients used as part of its program evaluation, described in Chapter II.

Other federal and state agencies, private organizations, associations and outreach programs operated by Kentucky colleges and universities also have programs that serve the needs of small coal operators. Each has some sort of list of clients served or targeted; however, none are more comprehensive than that possessed by the Natural Resources and Environmental Protection Cabinet. With its help a list was developed that consisted of coal mine operators who had mined 200,000 tons or less per year in one or more of the past few years. The production figures had been provided by the Revenue Cabinet's Severance Tax Division. This list was combined with another list of coal operators who had applied for a transition permit under the permanent program. The application is an indication of the intent and willingness of an operator to mine coal under the more stringent conditions imposed as of January 15, 1983, when the state assumed primacy under PL 95-87. This procedure generated a list of approximately 700 coal companies.

It is important to emphasize that this list of potential SOTAP clients is also not comprehensive. Many small mine operators are not on the list because, due to the presently depressed price of coal, they have yet to apply for a transition permit to mine coal under the permanent program. Conversely, there are a few duplicate mining operations on the list, since many individuals conduct business under more than one name or company. Finally, contract miners who do not have permits are not on the list.

Given the obvious problems in trying to identify all potential clients for the SOTAP program, it was decided that more information would be gathered within the time and manpower constraints if a mail survey questionnaire was sent to every name on the list rather than either using a sample, a telephone survey or face-to-face interviews. In sending out a questionnaire to the "total population" of small mine operators who exhibit tangible evidence of continuing to mine, randomness and reliability of responses become a question. However, the information gained is still useful to help verify or dispute data gathered from other sources.

There was concern about how many of the names on the Energy Cabinet list of 288 SOTAP contacts were also on the Natural Resources and Environmental Protection Cabinet list of potential clients. A comparison showed that 160 (55%) of the 288 were on the Natural Resources and Environmental Protection Cabinet list, meaning that 128 on the Energy Cabinet list did not receive an LRC questionnaire. However, 26 of the 38 respondents who were used for the Energy Cabinet internal evaluation did receive LRC surveys. Of the 128 contacts on the Energy Cabinet list that were not sent LRC questionnaire.

- 72 had not applied for transition permits;
- 13 mined more than 200,000 tons within the last three years;
- 3 had not mined coal recently; and
- 40 were not on the Natural Resources and Environmental Protection Cabinet list for reasons that could not be determined (probably contract miners).

Before developing the questionnaires, staff made field trips to interview agency representatives, coal association representatives and some small mine operators. They gathered much useful information in these visits about the SOTAP program and the needs of small mine operators. This information was also of use in designing the questionnaire. Once the questionnaire was developed it was given to the Energy Cabinet's Office of Administration for comment and subsequently field tested by a combination of association representatives and small mine operators.

The questionnaire (see Appendix C) was then sent to 704 potential SOTAP clients, companies currently identified as small mine operators with a definite interest in continuing to mine under the permanent program.

The goal of the survey, as stated before, was collecting information and opinions from the target client population of the SOTAP program. The survey's main objectives were to determine:

- the type of mining conducted and counties operated in;
- the types of assistance needed;
- attitudes and preferences toward receiving assistance from government and/or private organizations;
- what kinds of assistance had been offered and received from the Energy Cabinet and other organizations;
- the degree of awareness of SOTAP and their evaluation of it; and
- what major reasons might deter small mine operators from mining in the immediate future.

Survey Results

Of 704 questionnaires sent out, 138 were received within the timeframe allowed, for a response rate of about 20 percent. This twenty percent represents a select group of respondents who may not be representative of small mine operators. This is because the 138 companies in the target population that responded did so in a voluntary manner and not in accordance with a predetermined formula that balanced key variables and insured a response from all those chosen as a representative sample. However, these data obviously provide insight into the opinions of small mine operators who did respond to the survey. The percentage of responses received from eastern and western Kentucky compare favorably to the proportion of small mine operators estimated to exist in these areas.

This section on Survey Results is organized into subsections that address the survey objectives identified at the end of the section on Survey Methodology. Each survey objective therefore becomes a subsection heading.

Types of Mining Conducted and Counties Operated In

As shown in Figure 6, a little more than half, fifty-one percent, of the respondents are surface miners exclusively, twenty-nine percent are deep miners and the remaining twenty percent are operating both deep and surface mines. The intent of the question was to get a general breakdown for respondent identification and comparison purposes.

Respondents were asked to identify the counties in which they typically operated. Most listed only one county but many identified two or more. All counties listed were added up to yield a frequency of operations in each county identified. More respondents said they operated mines in Clay County in Eastern Kentucky than in any other county. Pike County and Floyd County were the next most frequently identified counties. This distribution is shown in Figure 7.

FIGURE 6
TYPE OF MINER

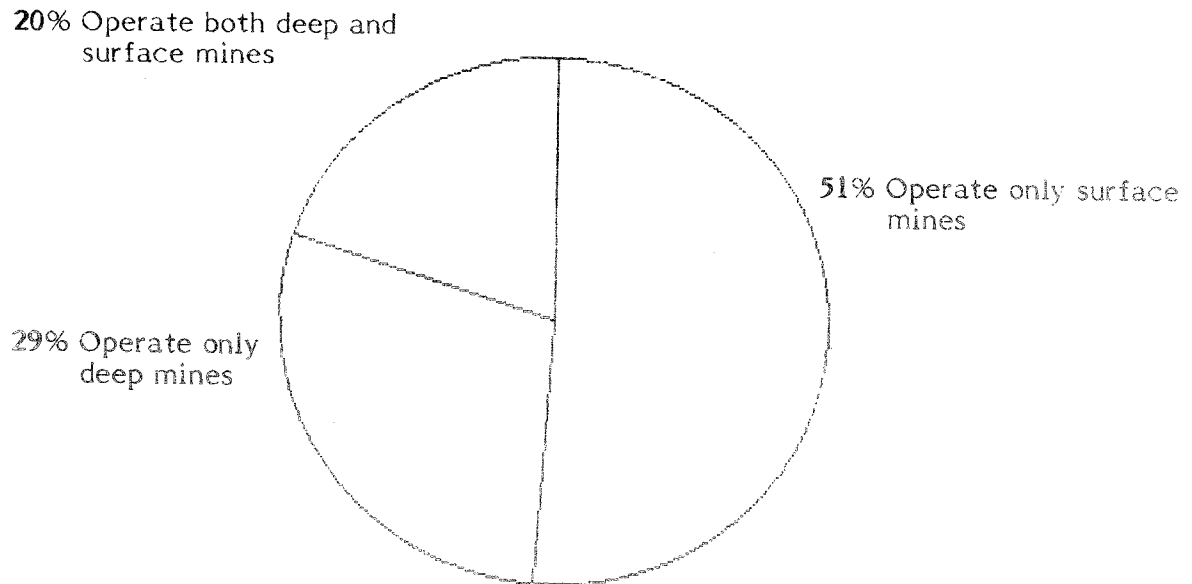
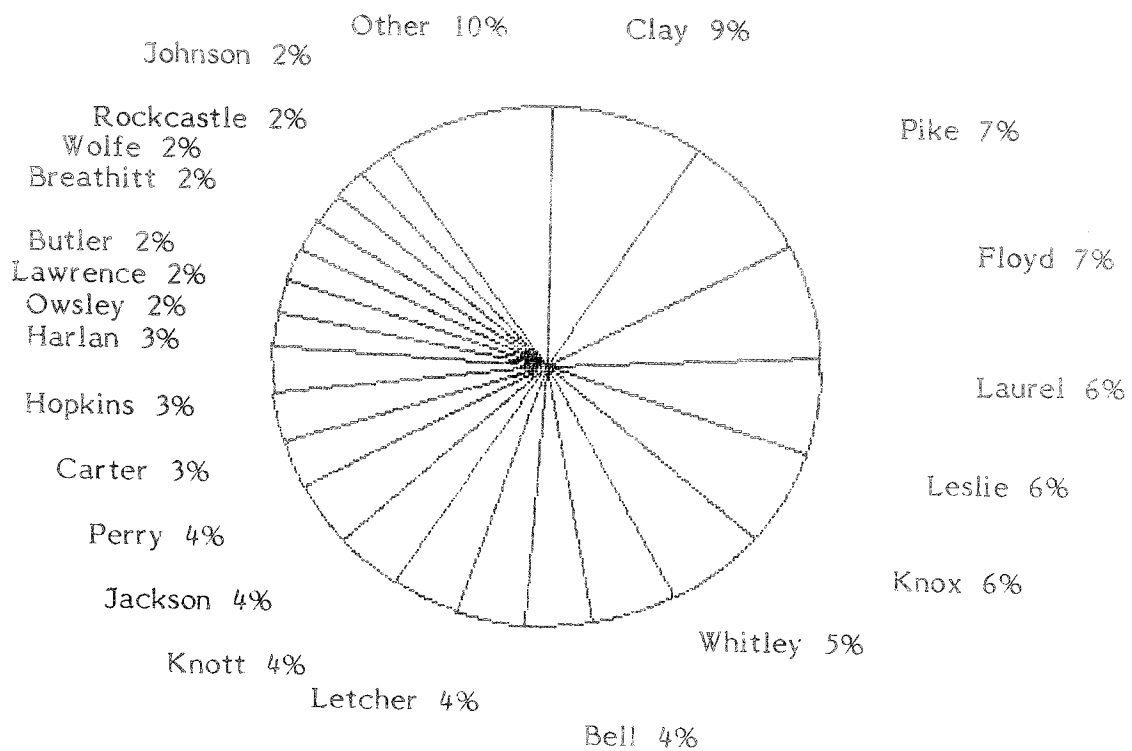


FIGURE 7
COUNTIES OPERATED IN BY RESPONDENTS



Types of Assistance Needed

Small operators were asked what types of assistance they felt in need of and were given a choice of eight items from which they could choose one or more needs. They were also given the chance to identify some other kind of assistance that was not listed. In this latter instance, the only category mentioned more than once was assistance in handling bonding requirements. The results are shown in Table 2 and show the most frequently picked categories of assistance that respondents felt they needed most.

TABLE 2

TYPE OF ASSISTANCE NEEDED

Type of Assistance Needed	Number Responding	% of Total Number of Respondents (138)
Technical Assistance with Mining Problems	24	17.4
Technical Assistance with Reclamation Problems	41	29.7
Assistance with Marketing Coal	71	51.4
Assistance with the Permitting Process	104	75.4
Assistance in Understanding Regulations	53	38.4
Business Management Assistance	3	2.2
Legal Assistance	20	14.5
Assistance in Transporting Coal to Market	14	10.1
None	1	.7
Bonding Assistance	4	2.9

As can be seen in Table 2, assistance with the permitting process is the most common need identified. This was the primary concern in the initial program goal as set by the legislation enacted by the General Assembly in 1979 and it is still the responsibility of the Natural Resources and Environmental Protection Cabinet. Marketing assistance is the second most commonly identified, reflecting, no doubt, current difficulties in selling coal. Fulfilling this need, however, was not addressed in the 1979 legislation, although it is being incorporated as an objective by the current SOTAP program, managed by the Energy Cabinet.

The third most common category, "assistance in understanding regulations," reflects a concern with remaining in compliance with the regulatory programs of the Natural Resources and Environmental Protection Cabinet and the Department of Mines and Minerals, as well as the federal Environmental Protection Agency. The fourth most

common category, "technical assistance with reclamation problems," has to do with requirements of the Natural Resources and Environmental Protection Cabinet.

Table 2 reveals that the majority of the needs of respondents relate to the Natural Resources and Environmental Protection Cabinet programs. This seems equally true of deep miners and surface miners.

Government Versus Private Assistance

Suspecting that small operators prefer to avoid government programs of any type, and being sensitive to the role of private consultants in providing assistance, staff respondents decided to ask if they would rather receive assistance from someone outside government, if it were free. Eighty-two percent of respondents preferred private assistance, other things being equal. This preference supports one of the reasons for initially setting up the assistance program within the framework of a quasi-independent organization (SOTAP, Inc.).

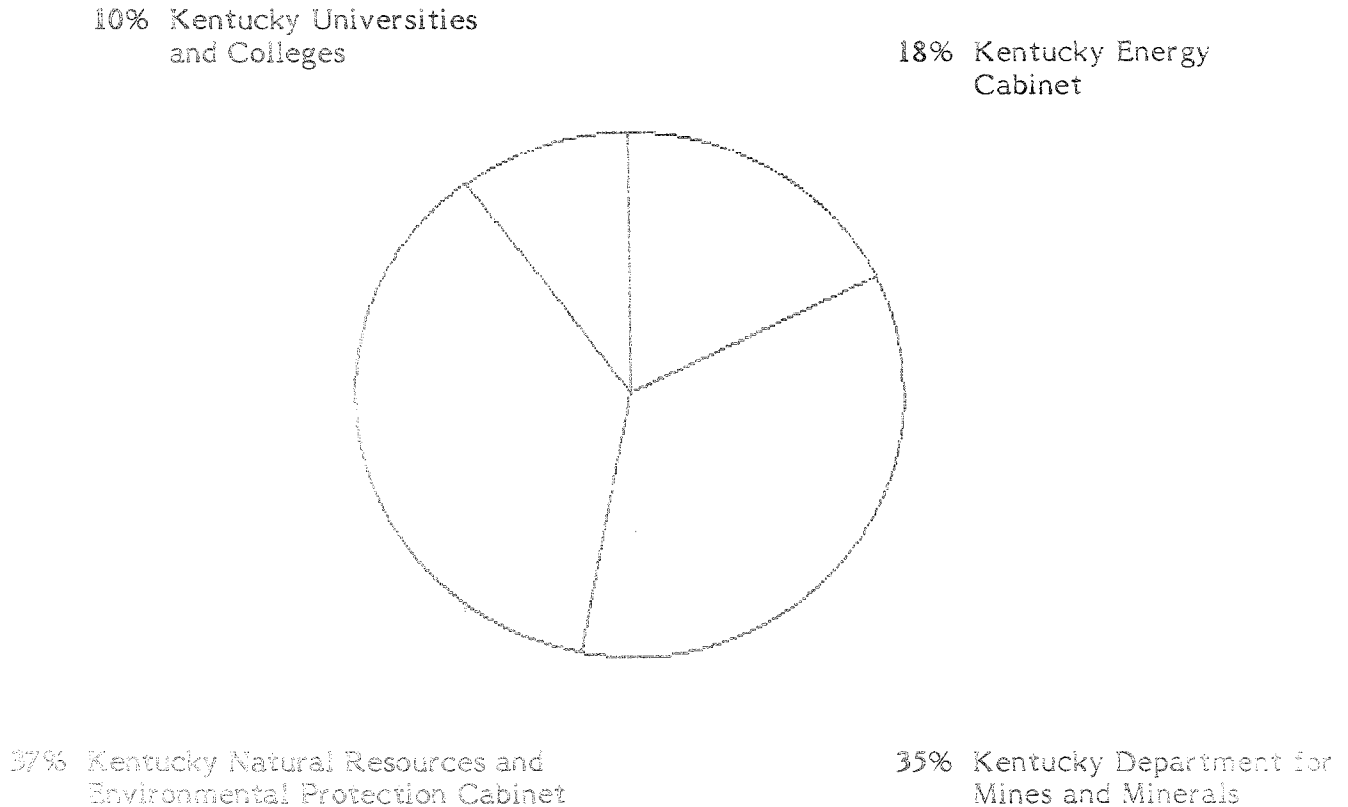
When asked which government organization might "best provide assistance to small mine operators," respondents were somewhat divided. As shown in Figure 8, the Natural Resources and Environmental Protection Cabinet was chosen by 37 percent of the respondents, while the Department of Mines and Minerals was preferred by 35 percent of the respondents. This is not interpreted as a criticism of the Energy Cabinet program, but instead a probable preference of miners to deal with agencies they are familiar with and whose expertise and mandate they believe most closely relates to their problems.

The responses shown in Figure 8 raise a few unanswered questions but are interesting nonetheless. For instance, although the Energy Cabinet would seem to be an advocate agency as far as small miners are concerned, as opposed to the Natural Resources and Environmental Protection Cabinet, which would be considered primarily a regulatory agency, surprisingly few thought that the Energy Cabinet could best provide the assistance needed by small mine operators. Of course, it can be said that the Energy Cabinet is not in a position to help with permitting and other regulatory problems, no matter how well-intentioned, because that is not their role. Or, as mentioned earlier, this preference could be strictly a reflection of respondents' familiarity with organizations they typically deal with.

Since a number of different assistance programs offer or require an education component, the survey contained a question as to whether respondents would attend mining education classes if they were offered in their areas, with or without charge. The responses were quite positive, with eighty-five percent saying they would attend free classes and seventy-three percent saying they would attend classes even if there were a reasonable charge.

FIGURE 8

WHO CAN BEST PROVIDE ASSISTANCE TO SMALL MINE OPERATORS



Assistance Received from the Energy Cabinet and Other Agencies

Small operators are potential recipients of varied assistance from many different organizations, as described in Chapter III. Trying to evaluate a particular program is made difficult by the inevitable confusion in the minds of recipients as to which program is serving them or who belongs to which agency. The situation is compounded in this particular case, where the program to be evaluated has gone through structural and affiliation changes over a short time span.

The task was to identify how many respondents had received any kind of assistance from specified agencies. At this point, there was no interest in making a distinction between SOTAP program assistance and any other assistance program. The answer to the question "Have you received assistance, training, or help from any of the following agencies?" yielded the results shown in Table 3.

TABLE 3

RESPONDENTS RECEIVING ASSISTANCE FROM AGENCIES

Agency	Number Responding	% of Total Number of Respondents (138)
Kentucky Department of Energy	21	15.2
Kentucky Department of Mines and Minerals	58	42.0
Kentucky Department for Natural Resources	33	23.9
Kentucky Universities and Colleges	16	11.6

The distribution in Table 3 points out that aside from the regulatory activities that are obviously carried out by the Natural Resources and Environmental Protection Cabinet and the Department of Mines and Minerals, a major portion of the respondents actually seem to perceive these agencies as a source of help and assistance. Again, as was implied by the results of the question of who might best provide assistance, there is a tendency to name those agencies with regulatory responsibilities.

Degree of Awareness of SOTAP and Respondent Evaluation

Only sixteen percent of the small operators who returned questionnaires were aware that the Energy Cabinet offered them an assistance program. About the same percentage acknowledged having had some contact with a representative of the SOTAP program. The percentage distribution of respondents who had heard of the program is shown in Figure 9.

The distribution in Figure 9 shows that twenty-one percent and twenty-three percent of the small operators returning questionnaires (Middlesboro and Madisonville field office service areas, respectively) had heard of the SOTAP program. A smaller percentage were aware of the program in the Hazard and Pikeville field office areas. One explanation for this could be problems of efficiency that SOTAP management reported having in the Hazard area (that field office representative position has been vacant for about six months but is about to be filled). Also, the Pikeville field office representative has additional job responsibilities for the Kentucky Export Resources Authority (KERA), which could be limiting the visibility of the SOTAP program in that area.

Thirty-three percent of respondents had heard of the program but operate in counties outside the field office service area boundaries as shown in Figure 5 in Chapter II. Some, but not many, of these respondents also do business in counties that are within field office service areas. As was explained earlier, the boundaries are not rigid; small operators who request assistance are served no matter where they are located.

FIGURE 9
PERCENTAGE DISTRIBUTION OF RESPONDENTS BY REGION

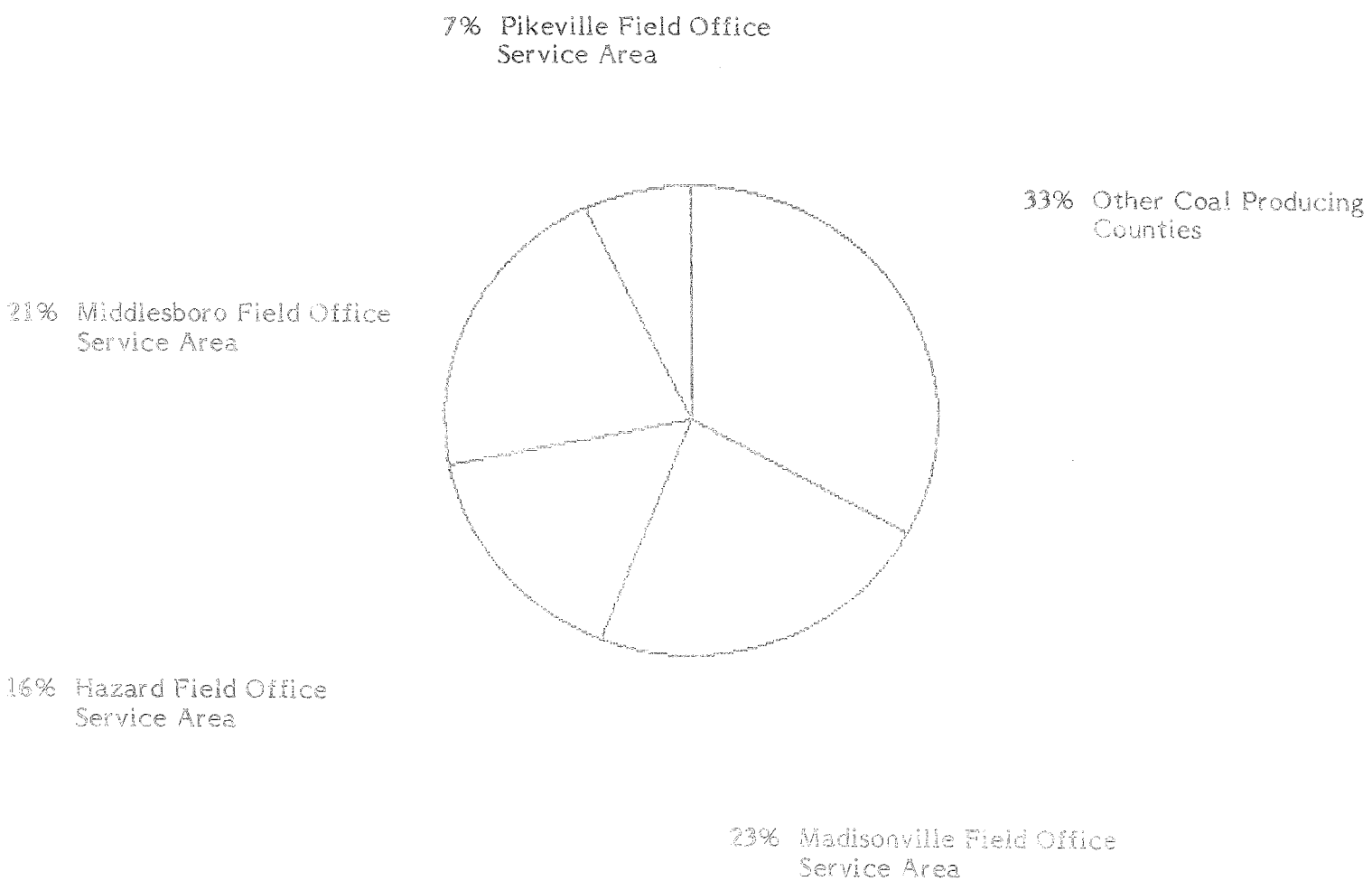


TABLE 4

TYPE OF ASSISTANCE RECEIVED

Type of Assistance	Number Receiving Assistance	% of Total Number of Respondents Contacted by the Dept. of Energy (22)
Assistance in Understanding Regulations	1	4.5
Assistance with Marketing Coal	1	4.5
Assistance with SOAP Application	9	40.9
Assistance with Any Permit Application	2	9.1
Assistance in Dealing with Regulatory Agencies	5	22.7
None	7	31.8

Respondents evaluated the assistance they received as follows:

Poor	10%
Fair	27%
Good	52%
Excellent	11%

Table 4 shows that the largest percentage of respondents received SOAP application assistance upon the Energy Cabinet SOTAP program. Few reported receiving assistance with permits. A little over half of the respondents who had received assistance thought the program should be expanded. Seventy-five percent of them thought that the program should be continued; the remaining twenty-five percent thought it should be eliminated.

Reasons Why Miners May Not Mine in the Immediate Future

Even though the survey questionnaires were sent to small operators who were thought to have a serious interest in continuing to mine coal, the questionnaire asked them if they planned to continue to mine coal. Eighty-two percent said they did. The remaining eighteen percent who did not plan to continue, or were not sure they would continue, were asked to identify the major reasons for not continuing. The most commonly identified reasons were time required to obtain permits and costs of obtaining permits. The full distribution of reasons is shown in Table 5.

TABLE 5

REASONS FOR NOT MINING COAL IN THE FUTURE

Reasons	Number Responding	% of Total Number of Respondents (26)
Time Required to Obtain Permits	23	88.5
Cost of Obtaining Permits	26	100.0
Bonding Requirements	19	73.1
Mining Laws and Regulations	19	73.1
Reclamation Laws and Regulations	18	69.2
Market Conditions	14	53.8

Conclusions

The survey provided some insight into the needs of responding small operators, and their degree of awareness of the SOTAP program. The low incidence of awareness of the program renders the data gathered on their evaluation of the program less reliable. Even so, this information was consistent with the results of the internal program evaluation survey conducted by the Energy Cabinet, referred to in Chapter II, lending credence to the results of both surveys.

To gain further insight into the results of the LRC survey, some question responses were compared to other question responses. For instance, since the SOTAP program had started out attached to the Natural Resources and Environmental Protection Cabinet but is now part of the Energy Cabinet, there was interest in determining who small operators thought could best provide them with assistance. So respondents were split into two groups and compared—those who had received assistance from SOTAP and those who had not. The results, tabulated below, are very similar and point out that about sixty-nine percent of those who have received assistance from the Energy Cabinet SOTAP program think that the assistance that they are in need of, not necessarily the assistance received, could best be provided by some other organization.

TABLE 6

WHO CAN BEST PROVIDE ASSISTANCE

Agency	Of Those Who Have Received SOTAP Assistance	Of Those Who Have Not Received SOTAP Assistance
Kentucky Energy Cabinet	31%	17%
Kentucky Department of Mines and Minerals	31%	36%
Kentucky Natural Resources and Environmental Protection Cabinet	31%	37%
Universities and Colleges	7%	10%

NOTE: Percentages indicate number of respondents who thought that particular agency could best provide them with assistance.

A plausible interpretation of Table 6 is that the majority of small mine operators think the Energy Cabinet is not able to, or is not the appropriate agency to, provide the assistance they need. This reading could mean that the assistance they have received from the SOTAP program is not the assistance they are in need of most. This conclusion is borne out to some extent by comparing the assistance received from the SOTAP program in Table 4 with the assistance most needed, as displayed in Table 2. Seventy-five percent said they most needed assistance with the permitting process but only nine percent of those receiving help got help in this area.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

The preceding chapters have shown that there has been, and still is, a continuing concern for the problems faced by small operators and an interest in seeing them survive the ups and downs of the marketplace and the burden of increasingly strict environmental controls. All persons interviewed during the course of this review are of the opinion that small operators are facing severe problems. Their concern is recognized by existing legislation and programs, both federal and state, whose main goal is to keep the small entrepreneur in business, thereby helping provide jobs and services that might otherwise be lost to local areas and helping preserve competition within the industry. Small operators maintain competition by being able, on the average, to mine coal for about seven dollars per ton less than large operators.

The small operator is an important part of Kentucky's coal industry, accounting for over a quarter of the coal mined in the state and providing direct employment for between 25,000 and 35,000 people, representing between \$15.3 million and \$20.4 million in primary wages. During 1981, small operators contributed almost \$57 million in state and federal coal severance taxes. The small operator helps maintain competition within the coal industry by taking a lower price for his coal on the spot market than utilities pay through long-term contracts. Also the small operator often supplies coal to contractors whose business is too small to interest larger coal producers. Without suppliers, small contractors would look for alternate sources of energy. In addition, small operators are able to mine small seams of coal that larger operators regard as uneconomical. So, in many ways the small operator is an essential part of the coal business and not likely to be replaced by big operators.

Although the burdens of conforming to environmental and safety laws have increased dramatically over the past five years, along with associated costs of compliance, so has the price of coal. In 1977 the contract price for steam coal was about \$20/ton; it rose to around \$33/ton in 1981. Most small operators sell on the spot market, which, although more volatile, also rose sharply, until its recent sharp drop.

It can be argued that if the small operator must pay more to remain in compliance with the law, it is of minor consequence, since his profit potential has increased at a greater rate, because coal prices have risen more sharply than the costs of non-regulatory related operations. Although this may be true in most instances, and indeed production figures for small miners over the past few years have not decreased, the full effects of primacy have yet to be measured.

Although primacy was only fully achieved in May, 1982, the vast majority of

small operators in Kentucky are still mining coal under the less stringent interim regulations. When forced to comply with the permanent regulations at some point in the next two years, many may be unequal to the task and drop out of business unless they receive needed assistance.

Obtaining a permit to mine coal under the permanent program can require at least \$20,000 of up front capital for a typical 25-acre site and can take a year or longer to obtain. These considerations mean that a decision to proceed with opening a mine cannot be influenced by the expected spot price of coal as it traditionally has been, unless the small operator has a contract already secured, which very few do, due to lack of reserves. Prior to the enactment of PL 95-87 in 1977, a small operator was able to obtain a permit within a few months at a cost of about \$2,400. If the price of coal went down he was better able to "wait it out" and pay interest on capital borrowed, or to go ahead and absorb the price decrease. Now, six months are required just to complete the water studies for a permit. Banks may be unwilling to finance start-up capital for the permitting process, given the long lead time involved and the up and down nature of the spot coal market. All things considered, it is hard to see how small operators will be able to contribute to the overall health of the coal industry in the same fashion as they have in the past, without some assistance. Therefore, in response to the 1982 General Assembly directive to evaluate the Energy Cabinet small miner assistance program regarding "its worth for continuance," we must first conclude that small mine operators are definitely in need of assistance if they are to continue to have a positive impact on the health of the coal industry and to contribute to the economy of eastern and western Kentucky.

Recommendation

1. A state funded assistance program for Kentucky small coal mine operators should be continued in accordance with KRS 350.450(4).

The General Assembly also directed the Program Review and Investigations Committee to "study the operation of this assistance program—and to submit its findings and recommendations to the 1984 General Assembly." In accordance with this directive the following conclusions and recommendations are made.

The Executive Budget submitted to the General Assembly by the Brown Administration in 1980 included a request for SOTAP funds to be appropriated to the Natural Resources and Environmental Protection Cabinet. However, in the final days of the session budget bill HB 931 was amended on the House Floor to shift the funds to the Energy Cabinet. There was little discussion of the implications of this reallocation either on the floor or in the committees with jurisdiction. All funds were shifted, both for the special internal administrative program to review small operator permits and for the permitting

technical assistance program handled by SOTAP, Inc. No accompanying change was made in the legislation setting up the program in KRS 350.450(4).

Some months later this was modified by Executive Order 80-473 which transferred about a third of the funds back to the Natural Resources and Environmental Protection Cabinet for the administration of KRS 350.450(4). No accompanying change was made to KRS 350.450(4) as a result of this Executive Order either, even though almost two-thirds of the funding for the program remained with the Energy Cabinet.

This series of events effectively split the assistance program, diluted its effectiveness and scattered an already reduced budget. Although in theory it might make sense to retain permitting assistance within the Natural Resources and Environmental Protection Cabinet and shift technical assistance to the Energy Cabinet, in practice it has resulted, in these times of budgetary constraint, in limiting and dividing the manpower resources available to assist small mine operators. Moreover, the technical assistance part of the program is essentially permitting technical assistance, a function designed to help preview, facilitate and complete permit applications in close cooperation with the Natural Resources and Environmental Protection Cabinet. This is a function that Energy Cabinet officials say they are not well equipped to perform. The program as presently operated by the Energy Cabinet does not have a formal arrangement or informal working relationship with the Natural Resources and Environmental Protection Cabinet whereby permits are reviewed by SOTAP personnel to facilitate speedy review, as mandated by KRS 350.450(4). Instead, since dissolving SOTAP, Inc., the Energy Cabinet has changed the focus of SOTAP to emphasize broader technical assistance. This shift is reflected in the reorganization bill submitted to the 1982 General Assembly in response to E.O. 80-473, which delegated to Energy in KRS 152A(1) the responsibility for "providing basic assistance to small coal operators." It does not include any explanation of what "basic assistance" is, nor does it define what a small operator is.

Much of the assistance actually provided by Energy Cabinet SOTAP personnel is in the area of the SOAP application process, whereby small operators can secure federal funds, through the Natural Resources and Environmental Protection Cabinet, for hydrological and other studies. The Natural Resources and Environmental Protection Cabinet has a central office staff of eighteen persons, many of them technical experts, such as engineers and geologists, plus seven field representatives, who work part of the time on SOAP responsibilities. The Energy Cabinet SOTAP field representatives, known as Coal Development Technical Consultants, are required to have three to four years of coal mining administrative experience, depending upon their degree, but none are technical specialists and none have worked for the Natural Resources and Environmental Protection Cabinet in the areas of permitting or standards. This limitation could present problems for the field representatives, since the Application for a Surface Coal Mining and Reclamation Opera-

tions Permit, also required for underground mining activities and coal processing facilities, is very long and complex. This 35-page permit application comes with a 63-page set of instructions. Finally, the Small Coal Operators Advisory Council, established by Executive Order 80-862 in October, 1980, and incorporated within KRS 152A.127 to advise the Energy Cabinet on matters affecting coal production, has not been reappointed since the original terms expired.

These circumstances suggest that the state assistance program for small operators might be more effective if the part that was transferred to the Energy Cabinet were transferred back to the Natural Resources and Environmental Protection Cabinet. The argument that technical assistance should not be provided by the same agency that regulates a particular activity is open to question in this case. The Natural Resources and Environmental Protection Cabinet is by no means strictly a regulatory agency. The SOAP program, operated within the Bureau of Surface Mining Reclamation and Enforcement, is a good example of a service program. Above all, small operators are in need of assistance in coping with the permitting and reclamation programs of the Natural Resources and Environmental Protection Cabinet. In similar fashion to the assistance offered by the federal Internal Revenue Service, an internal division, such as that which administers the SOAP program and which already has the technical expertise and field representatives, could provide the help needed. If this solution is for some reason not acceptable, then there is always the original plan to reconsider, SOTAP, Inc., an arms length corporation patterned after the Legal Services Corporation, which could aggressively promote and serve the needs of Kentucky's small mine operators.

Recommendation

2. State funds appropriated to the Energy Cabinet to support the Small Mine Operators Technical Assistance Program (SOTAP), in accordance with KRS 350.450(5), now subsection (4) in the KRS 1983 replacement, should in the future be budgeted to the Natural Resources and Environmental Protection Cabinet. Personnel, equipment, materials and any funds should also be transferred at the appropriate time.

Chapter III of this report shows that there are numerous programs to assist small coal operators. However, these programs are often narrow in scope and are often not visible to their potential clients. Kentucky's small operators might be better served if one organization were made responsible for coordinating and improving the communication and formal working relationships between the different agencies operating these programs. The Small Coal Operators Advisory Council, established by KRS 152A.127 but now dormant, could be broadened in scope and put in an oversight position to advise the Secretary

of the Cabinet, appropriate Cabinet secretaries and others as to the needs and problems of Kentucky's small operators.

Recommendation

3. The Small Coal Operators Advisory Council as established in KRS 152A.127 should be made to report directly to the Secretary of the Governor's Executive Cabinet. Ten of its fourteen members should be appointed by the Governor. Seven members of the Council should be full-time coal operators whose mines produce 200,000 tons of coal or less per year. Three at-large members should have backgrounds in one or more of the following areas: transportation, marketing, mining education, and mining engineering. The Secretaries of the Natural Resources and Environmental Protection, Energy, and Commerce Cabinets and the Commissioner of the Department of Mines and Minerals should serve ex-officio as the four remaining members. The mission of the Council should be broadened to include oversight of state funded or administered programs serving or assisting small coal mine operators. The Council should be attached to the Natural Resources and Environmental Protection Cabinet for administrative purposes.

A major problem of SOTAP as well as all of state government over the past few years is budgetary constraints. The Brown administration has promoted economic development as a means to combat recession. Still, the budget for helping small operators through the SOTAP program has been reduced from \$290,000 for FY 80-81 to \$177,200 in FY 1983-84. LRC survey results show that small operators heavily favor attending mining education classes. Also, they cite the need for assistance in understanding regulations and in solving reclamation problems. Section 705(a) of PL 95-87 permits the federal Office of Surface Mining to "make annual grants to any state for the purpose of assisting such state in developing, administering and enforcing state programs" under the Act. Cooperation and assistance is also authorized under Section 705(b) and includes:

technical assistance and training including provision of necessary curricular and instruction materials, in the development, administration and enforcement of the state programs.

In an interview with LRC project staff, Mr. James Harris, Director of the Department of Interior's Office of Surface Mining (OSM), expressed his support for small operators. Indications are that the OSM would be receptive to a proposal for a cooperative effort with Kentucky wherein federal SOAP money could be used to set up and help pay for

training and education programs for small operators. Therefore, the following recommendation is made.

Recommendation

4. The Natural Resources and Environmental Protection Cabinet, being the agency designated to have primary responsibility at the state level for administering PL 95-87, should immediately take the initiative in developing a proposal, in close cooperation with OSM, aimed at determining the framework for a training, education and assistance program under Section 705 or such other part of PL 95-87 as is appropriate. Cooperation and assistance should also be sought from all interested private and public agencies, especially Kentucky's universities and colleges.

Such assistance programs as the Small Operators Assistance Program (SOAP), funded by a combination of federal and state funds under PL 95-87, are tied to the federal definition of a small operator, which is one who mines less than 100,000 tons of coal a year. Under Kentucky law (KRS Chapter 350), the upper limit is not 100,000, but 200,000 tons a year. Considering existing manpower and funding limitations, it is difficult to see how SOTAP can serve all the potential clients who mine less than 100,000 tons per year, let alone all who mine less than 200,000. Therefore, in the interests of serving those clients in greatest need and better coordinating the major elements of small operator assistance programs, the following recommendation is made.

Recommendation

5. The definition of a small operator in KRS 350.450(4) should remain the same; however, first priority for SOTAP should go to operators mining 100,000 tons or less per year.

Small operators need help in dealing with an unpredictable marketplace, which many people have said does more to harm them than all the federal and state regulations put together. A more stable and predictable market for coal would allow small operators to:

- obtain better financing;
- offer more dependable jobs;
- better predict and fulfill production needs; and
- direct more timely attention to environmental concerns.

Recommendation

6. The Kentucky Energy Cabinet is urged to continue its marketing assistance role under 152A.125(1).

APPENDICES

APPENDIX A

DEFINITIONS

Small Operator Assistance Program (SOAP). A federal program under PL 95-87, managed by the Natural Resources Cabinet to provide funds to miners of 100,000 tons of coal per year or less. Pays for the hydrological survey required by permit application and examination of results of required geological survey.

Kentucky Small Mine Operators Technical Assistance Project, Inc. (KSOTAP, Inc.). This was the non-profit corporation created and funded by the Natural Resources Cabinet to implement many of the provisions of HB 38 by the 1979 Extraordinary Session of the General Assembly.

Small Mine Operators Technical Assistance Program (SOTAP). The assistance program currently operated by the Energy Cabinet with state funds since 1980 when the responsibility for SOTAP, Inc. was transferred from the Natural Resources Cabinet to the Energy Cabinet. Serves primarily coal operators who mine less than 200,000 tons of coal annually.

Interim Program (Interim Permit). To allow states, miners and affected citizens a transition time to adjust to the stringent requirements of PL 95-87. This interim period allowed miners to submit applications for interim permits to the Natural Resources Cabinet. The interim program regulations were less strict in certain areas.

Primacy. This means the state has primary responsibility for implementing, administering and enforcing the requirements of the federal Surface Mining Control and Reclamation Act (PL 95-87). This was possible only after the Kentucky General Assembly enacted legislation conforming to the federal act; and, that the Natural Resources and Environmental Protection Cabinet had designed a regulatory program which the federal Office of Surface Mining Reclamation and Enforcement within the Department of the Interior deemed adequate to carry out the mandates of the federal law and federal regulations.

Appendix A
Continued

Permanent Program. Achieving primacy coincides with the implementation of the permanent program. That program, superceding the interim program and being in full conformity with state and federal laws and regulations complying with PL 95-87, came into effect on January 18, 1983 in Kentucky.

Transition Permit. Transition permits to mine coal were issued to miners who applied for permits under the permanent program but whose applications were either incomplete, or whose applications have not been completed by the Natural Resources Cabinet.

APPENDIX B
ENERGY CABINET TELEPHONE SURVEY

SUMMARY RESPONSES & RECOMMENDATIONS

The following is a summary of key responses from the operators interviewed.

Overall Opinion of the Program

- Excellent	-	41%
- Good	-	30%
- Average	-	15%
- Fair	-	15%
- Poor	-	0%

Type of Assistance Provided to Operators

- Information	-	93%
- Technical Assistance	-	63%
- Direct Assistance	-	19%

Operator Satisfaction with Services Received

- Very Satisfied	-	44%
- Satisfied	-	41%
- Unsatisfied	-	0%
- No Opinion	-	4%

Operators Contacting Representatives and Satisfaction with Response

- Initiated Contact	-	52%
- Did Not Initiate Contact	-	48%
- Satisfied with Response	-	100%
- Dissatisfied with Response	-	0%

Operators Willing to Refer Another to the Service

- Yes	-	91%
- No	-	9%

Operator Opinion on Continuing Program

- Yes	-	89%
- No	-	11%

Impact on Operator from Discontinuing Program

- High Impact	-	22%
- Moderate Impact	-	41%
- Low Impact	-	37%

APPENDIX C
SMALL COAL OPERATOR MAIL SURVEY QUESTIONNAIRE

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

1. What type(s) of assistance do you need the most as a small mine operator?
(Check more than one if necessary.)

- (1) _____ Technical assistance with mining problems
(2) _____ Technical assistance with reclamation problems
(3) _____ Assistance with marketing coal
(4) _____ Assistance with the permitting process
(5) _____ Assistance in understanding regulations
(6) _____ Business management assistance
(7) _____ Legal assistance
(8) _____ Assistance in transporting coal to market
(9) _____ None
(10) _____ Other, please specify:

2. Who can best provide assistance to small mine operators? (Check one only.)

- (11) _____ (1) Kentucky Department of Energy
_____ (2) Kentucky Department of Mines and Minerals
_____ (3) Kentucky Department for Natural Resources
_____ (4) Kentucky Universities or Colleges

3. Would you rather receive assistance from someone outside government if it were free?

- (12) Yes _____ No _____

4. Would you attend mining education classes if they were offered in your area, free of charge?

- (13) Yes _____ No _____

5. Would you attend these mining education classes if there were a reasonable charge?

- (14) Yes _____ No _____

6. Have you received assistance, training, or help from any of the following agencies?

- (15) Yes _____ No _____ Kentucky Department of Energy
(16) _____ Kentucky Department of Mines and Minerals
(17) _____ Kentucky Department for Natural Resources
(18) _____ Kentucky Universities and Colleges

7. Have you ever heard of the assistance program for small mine operators, offered by the Kentucky Department of Energy?

(This is not KYSOTAP, Inc., formerly operated in conjunction with the Department for Natural Resources, nor the federal government SOAP, which pays for your water quality testing, nor the Kentucky Export Resources Authority (KERA), which is operated by the Kentucky Department of Energy.)

- (19) Yes _____ No _____

8. Have you been contacted by anybody from the Kentucky Department of Energy about their assistance program for small mine operators?

- (20) Yes _____ No _____

If NO, please go to question 14.

9. What type of assistance was offered to you by the Department of Energy? (Check as many as necessary.)

- (21) _____ Assistance in understanding regulations
(22) _____ Assistance with marketing coal
(23) _____ Assistance with SOAP application
(24) _____ Assistance with any permit application
(25) _____ Assistance in dealing with regulatory agencies
(26) _____ None
(27) _____ Other, please specify:

10. What type of assistance did you receive from the Department of Energy? (Check as many as necessary.)

- (28) _____ Assistance in understanding regulations
(29) _____ Assistance with marketing coal
(30) _____ Assistance with SOAP application
(31) _____ Assistance with any permit application
(32) _____ Assistance in dealing with regulatory agencies
(33) _____ None
(34) _____ Other, please specify:

11. How would you rate the assistance you received from the Department of Energy? (Check one only.)

- (35) _____ (1) Poor
_____ (2) Fair
_____ (3) Good
_____ (4) Excellent

12. Do you think the assistance program offered by the Kentucky Department of Energy should be expanded to provide other types of assistance?

- (36) Yes _____ No _____

If yes, what kind of assistance? (Please write on back.)

13. Do you believe the assistance program offered by the Kentucky Department of Energy should be: (Check one only.)

- (37) _____ (1) continued?
_____ (2) eliminated?

14. Do you plan to continue to mine coal?

- (38) Yes _____ No _____

15. If you plan not to mine coal in the future, what are the reasons? (Check more than one if necessary.)

- (39) _____ Time required to obtain permits
(40) _____ Cost of obtaining permits
(41) _____ Bonding requirements
(42) _____ Mining laws and regulations
(43) _____ Reclamation laws and regulations
(44) _____ Market conditions
(45) _____ Other, please specify:

16. Are you a: (Check one only.)

- (46) _____ (1) deep miner?
_____ (2) surface miner?
_____ (3) or both?

17. Please list the counties you generally operate in.

(47-49) _____
(50-52) _____
(53-55) _____
(56-58) _____
(59-61) _____
(62-64) _____

Please return this questionnaire to us by February 7, 1983 in the enclosed self-addressed, postage-paid envelope. If the enclosed envelope should become lost, please return the questionnaire to us at the following address:

Senator John Doug Hays
Program Review Committee
Legislative Research Commission
Capitol
Frankfort, KY 40601



JOHN Y. BROWN, JR.
GOVERNOR

EXECUTIVE ORDER

80-473

June 17, 1980

Secretary of State

Frankfort
Kentucky

RELATING TO REORGANIZATION

Department of Energy

WHEREAS, increased domestic fuel production is the key to our energy dilemma; and

WHEREAS, Kentucky has abundant fossil fuels and other energy resources that can be produced and utilized; and

WHEREAS, the Commonwealth and its Department of Energy has a mandate to organize and act effectively to improve the existing and future supply of energy; and

WHEREAS, the Secretary of Energy is charged with the responsibility to organize the department to efficiently carry out its mission;

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky by virtue of the authority vested in me by KRS 12.025, do hereby order and direct as follows:

1. The Department of Energy shall be divided into the following bureaus, each to be headed by a Commissioner appointed by the Secretary pursuant to KRS 12.050:

a. The Bureau of Energy Production and Utilization, which is hereby created and is charged with the responsibility of insuring the increased production of fossil fuels and expanded use of domestic energy sources.

b. the Bureau of Energy Research and Development, formerly the Bureau of Energy Research, which shall manage the Energy Research Laboratory Program and shall oversee the efficient use of the state's energy research funds utilizing the University of Kentucky Institute for Mining and Minerals Research as prime research contractor. The



JOHN Y. BROWN, JR.
GOVERNOR

EXECUTIVE ORDER

80-473

June 17, 1980

Page two

Secretary of State
Frankfort
Kentucky

Bureau shall also direct the state-supported, non-academic program of the Kentucky Geological Survey assigned the Department by SB 376 to insure an effective energy-related geological program.

c. The Bureau of Energy Conservation and Distribution, formerly the Bureau of Energy Management, with duties assigned in KRS Chapter 152A as modified herein.

2. The Bureau of Energy Production and Utilization shall consist of the following Divisions, each headed by a Director appointed pursuant to KRS 12.050:

a. the Division of Coal Development which shall enhance the markets for Kentucky coal, identify problems and implement solutions for improving Kentucky coal production and coal transportation, provide basic assistance to small coal operators, and coordinate assistance to Kentucky's coal operators.

b. the Division of Alternate Energy Development, which shall provide the application of appropriate technologies including the development of solar and renewable energy resources and small scale hydroelectric plants. The Division shall also be responsible for promoting when feasible the production of energy from other resources such as solid waste and biomass.

3. The Division of Technical Assistance, Bureau of Energy Research (renamed herein), is hereby abolished. All responsibility for technical assistance programs is hereby assigned to the Bureau of Energy Production and Utilization.



JOHN Y. BROWN, JR.
GOVERNOR

EXECUTIVE ORDER

80-473

June 17, 1980

Secretary of State
Frankfort
Kentucky

Page three

4. The Division of Energy Production, Bureau of Energy Management (renamed herein) is hereby abolished. The energy data and information program including staff, equipment, and funds, is transferred from the Division to the Department of Energy Office of Planning and Evaluation. The program shall be headed by an Assistant Director for Energy Information Systems in the Office of Planning and Evaluation, who shall be a major assistant appointed by the Secretary pursuant to KRS 12.050.

5. The Department of Energy shall make available an annual report which shall outline its progress in carrying out the mandate given it herein, and shall maintain a two-year energy development policy plan for public inspection.

6. Transfers to the Bureau of Energy Production and Utilization shall include the transfer of all funds, personnel, and equipment allocated to the following:

(1) the Small Coal Operators Technical Assistance Project as budgeted through the Department by HB 931, excluding \$158,500 in fiscal year 1980-81 and \$167,400 in fiscal year 1981-82 and personnel associated therewith, which is hereby transferred to the Department for Natural Resources and Environmental Protection for the administration of its program under KRS 350.450(5).

(2) the development of coal warehousing and a commodities exchange for coal futures as authorized and budgeted by SB 260.

(3) the Division of Technical Assistance which is abolished in Section 3 of this Order.

(4) the Division of Energy Production, excluding the energy data and information program transferred by Section 4 herein, which is abolished by this Order.



JOHN Y. BROWN, JR.
GOVERNOR

EXECUTIVE ORDER

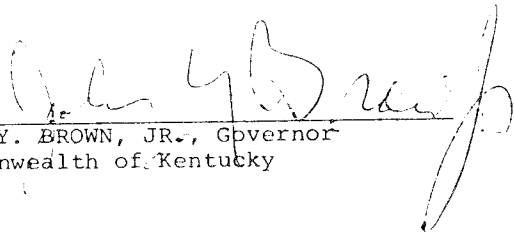
80-473

June 17, 1980

Page four

Secretary of State
Frankfort
Kentucky

7. The Secretary of Finance and the Commissioner of
Personnel shall take all necessary steps to implement this Order,
which shall be effective July 1, 1980.


JOHN Y. BROWN, JR., Governor
Commonwealth of Kentucky


FRANCES JONES MILLS
Secretary of State



SENATE MEMBERS

Delbert S. Murphy
Assistant President Pro Tem

Joe Wright
Majority Floor Leader

James P. Bunning
Minority Floor Leader

David K. Karem
Majority Caucus Chairman

Gene Huff
Minority Caucus Chairman

Helen Garrett
Majority Whip

Doug Moseley
Minority Whip

LEGISLATIVE RESEARCH COMMISSION

State Capitol

Frankfort, Kentucky 40601

502-564-8100

Joseph W. Prather, Senate President Pro Tem

Bobby H. Richardson, House Speaker
Chairman

Vic Hellard, Jr.
Director

HOUSE MEMBERS

Donald J. Blandford
Speaker Pro Tem

Jim LeMaster
Majority Floor Leader

Arthur L. Schmidt
Minority Floor Leader

William "Bill" Donnermeier
Majority Caucus Chairman

Richard Turner
Minority Caucus Chairman

James R. Dunn
Majority Whip

Willard "Woody" Allen
Minority Whip

MEMORANDUM

TO: Co-Chairmen, Interim Joint Committee on Energy
Co-Chairmen, Interim Joint Committee on Agriculture
and Natural Resources
Co-Chairmen, Interim Joint Committee on Appropriations
and Revenue

FROM: Representative Hank Hancock, Chairman
Program Review and Investigations Committee

DATE: May 9, 1983

SUBJECT: Kentucky Small Mine Operators Technical Assistance Program (SOTAP)

The Kentucky General Assembly, in Budget Bill HB 295 in 1982, directed the Program Review and Investigations Committee to review the operations of the Kentucky Small Mine Operators Technical Assistance Program (SOTAP) as set out in KRS 350.450(4) and make appropriate recommendations as to its continuance and operations.

At its meeting on May 3, the Program Review and Investigations Committee considered the staff evaluation of SOTAP and adopted the following recommendations.

1. A state funded assistance program for Kentucky small coal mine operators should be continued in accordance with KRS 350.450(4).
2. State funds appropriated to the Energy Cabinet to support the Small Mine Operators Technical Assistance Program (SOTAP) in accordance with KRS 350.450(5), now subsection (4) in the KRS 1983 replacement, should in the future be budgeted to the Natural Resources and Environmental Protection Cabinet. Personnel, equipment, materials and any funds should also be transferred at the appropriate time.

3. The Small Coal Operators Advisory Council as established in KRS 152A.127 should be made to report directly to the Secretary of the Governor's Executive Cabinet. Ten of its fourteen members should be appointed by the Governor. Seven members of the council should be full-time coal operators whose mines produce 200,000 tons of coal or less per year. Three at-large members should have backgrounds in one or more of the following areas: transportation, marketing, mining education, and mining engineering. The Secretaries of the Natural Resources and Environmental Protection, Energy, and Commerce Cabinets, and the Commissioner of the Department of Mines and Minerals should serve ex-officio as the four remaining members. The mission of the Council should be broadened to include oversight of state funded or administered programs serving or assisting small coal mine operators. The Council should be attached to the Natural Resources and Environmental Protection Cabinet for administrative purposes.
4. The Natural Resources and Environmental Protection Cabinet, being the agency designated to have primary responsibility at the state level for administering PL 95-87, should immediately take the initiative in developing a proposal in close cooperation with OSM, aimed at determining the framework for a training, education and assistance program under Section 705 or such other part of PL 95-87 as is appropriate. Cooperation and assistance should also be sought from all interested private and public agencies, especially Kentucky's universities and colleges.
5. The definition of a small coal mine operator in KRS 350.450(4) should remain the same; however, first priority for assistance under SOTAP should go to operators mining 100,000 tons or less per year.
6. The Kentucky Energy Cabinet is urged to continue its marketing assistance role under 152A.125(1).

The Program Review and Investigations Committee's policy is to provide the committee of jurisdiction with the first opportunity to pre-file bills relative to its recommendations.

elr

cc: Linda Kubala
Brooks Talley
Gilmore Dutton

RECOMMENDATION WORKSHEET

Small Mine Operators Technical Assistance Program

COMMITTEE
ACTION

AGENCY
RESPONSE

RECOMMENDATION

Adopted 5/3/83

1. A state funded assistance program for Kentucky small coal mine operators should be continued in accordance with KRS 350.450(4).

Natural Resources

Agree. Would like to see new approaches taken to cut present time span to issue permits by addressing problems of data availability, thereby perhaps eventually removing five to six months of data collection requirements.

Energy

No comment.

2. State funds appropriated to the Energy Cabinet to support the Small Mine Operators Technical Assistance Program (SOTAP) in accordance with KRS 350.450(5), now subsection (4) in the KRS 1983 replacement, should in the future be budgeted to the Natural Resources and Environmental Protection Cabinet. Personnel, equipment, materials and any funds should also be transferred at the appropriate time.

Natural Resources

Will, if directed by either Legislative or Executive Branch, assume responsibility for the Small Mine Operator Technical Assistance Program.

Energy

Disagree. Natural Resources Cabinet should provide permitting assistance and Energy Cabinet should provide other kinds of assistance. The Energy Cabinet can provide a more forceful advocacy function than a regulatory agency. The existing program, in its present location, is the best arrangement for providing technical assistance to the small operator.

Adopted 5/3/83

COMMITTEE
ACTION

AGENCY
RESPONSE

RECOMMENDATION

Adopted 5/3/83

3. The Small Coal Operators Advisory Council as established in KRS 152A.127 should be made to report directly to the Secretary of the Governor's Executive Cabinet. Ten of its fourteen members should be appointed by the Governor. Seven members of the Council should be full-time coal operators whose mines produce 200,000 tons of coal or less per year. Three at-large members should have backgrounds in one or more of the following areas: transportation, marketing, mining education, and mining engineering. The Secretaries of the Natural Resources and Environmental Protection, Energy, and Commerce Cabinets and the Commissioner of the Department of Mines and Minerals should serve ex-officio as the four remaining members. The mission of the Council should be broadened to include oversight of state funded or administered programs serving or assisting small coal mine operators. The Council should be attached to the Natural Resources and Environmental Protection Cabinet for administrative purposes.

Natural Resources

Agree. A functioning Council should result in some favorable policies and programs which would assist the small coal operator. The Natural Resources Cabinet has no problem in assisting or working with this Council.

Energy

No comment.

Adopted 5/3/83

4. The Natural Resources and Environmental Protection Cabinet, being the agency designated to have primary responsibility at the state level for administering PL 95-87, should immediately take the initiative in developing a proposal in close cooperation with OSM, aimed at determining the framework for a training, education and assistance program under Section 705 or such other part of PL 95-87 as is appropriate. Cooperation and assistance should also be sought from all interested private and public agencies, especially Kentucky's universities and colleges.

Natural Resources

Agree. An education and training effort would be beneficial to small operators.

Energy

No comment.

RECOMMENDATION

AGENCY RESPONSE

COMMITTEE ACTION

5. KRS 350.450(4) should be amended to define a small coal mine operator, eligible to receive assistance under this subsection, as one who is anticipated to mine less than 100,000 tons per year.

Natural Resources

Agree. It would be beneficial to all to have the definition of small operator consistent.

Energy

Disagree. No justification to exclude the substantial number of persons producing between 100,000 and 200,000 tons. Believe that program services should be made available to more, rather than fewer, small operators.

Amended recommendation to read:

The definition of a small coal mine operator in KRS 350.450(4) should remain the same; however, first priority for assistance under SOTAP should go to operators mining 100,000 tons or less per year.

6. The Kentucky Energy Cabinet is urged to continue its marketing assistance role under 152A.125(1).

Natural Resources

No comment.

Energy

No comment.

Adopted 5/3/83

